SUPREME COURT OF THE UNITED STATES.

No. 267.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY, APPELLANTS,

vs.

JAMES T. SOUTTER, SURVIVOR OF GREENE C. BRONSON, AND JAMES T. SOUTTER, TRUSTEES, &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.

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1 District court of the United States of America for the district of Wisconsin.

GREENE C. BRONSON AND JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, The Milwaukee and Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, DeWitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin J. Blair, Edmund R. Persons, Philip S. Justice, Elkanah Cobb, John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, The Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S. Bouton, The Juneau Bank, The Milwaukee, Watertown and Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard and Henry Vallette. } In equity.

Continuation of the record in the above-entitled cause, certified to the Supreme Court of the United States on the 10th day of April, A. D. 1862.

2

April	16,	1862.	Receiver's report for month of			March,	1862,	filed.
May	20,	1862.	"	"	"	April,	"	"
June	20,	"	"	"	"	May,	"	"
July	18,	"	"	"	"	June,	"	"
August	22,	"	"	"	"	July,	"	"
September	23,	"	"	"	"	August,	"	"

October 7, 1863, the following stipulation was filed:

Stipulation.

Circuit court of the United States for the 8th circuit and district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, complainants,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendant. } In equity.

It is hereby stipulated by the parties defendant hereto subscribing, hat pending the proceedings in the Supreme Court of the United

States, or in this court, for the decree stipulated for in the above-entitled cause, the complainants may have an order or orders of this court in the said cause for the payment of the coupons on the bonds described in their bill of complaint, which will fall due the first day of March, A. D. 1863, and thereafter, pending the said proceedings, under said stipulations, for the decree therein mentioned.

MAT. H. CARPENTER,
Solicitor for Graham & Scott, The Milwaukee and Minnesota Railroad Company, and A. Fleming, defendants.
LEVI HUBBELL,
Solicitor for Sebre Howard, dec'd, and Chas. Howard, assignee of Sebre Howard's judgment, and for John S. Rockwell, defendants.

And same day, (Oct. 7, 1862,) the following stipulation was filed:

3 *Stipulation.*

In circuit court of the United States for the 8th circuit and district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, complainants, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants. } In equity.

It is hereby stipulated, by the respective parties hereto subscribing, that the receiver heretofore appointed in this cause by the district court of the United States for the district of Wisconsin, upon the application of the complainant in said cause, be, and he is hereby, from the date and filing of this stipulation, relieved and released from all duties as receiver in said cause, excepting to account to and with said court, according to law, for the benefit of the parties interested, or persons or parties concerned in said accounting.

And it is hereby further stipulated, that the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause, shall have the right to, and may, on the morning of October 6th, 1862, or as soon thereafter as it shall elect or choose so to do, take and enter into full possession and enjoyment of the railroad, property, rights, privileges, and franchises now in the hands of the receiver appointed in this cause, without any application to the court for that purpose, and without awaiting the order of said court upon the accounts of said receiver, or dismissing or discharging said receiver from his duties in this c use.

4 This stipulation may be filed at any time, and shall be full authority from the time of its execution to the Milwaukee and Minnesota Railroad Company to take such possession.

Dated October 4th, A. D. 1862.

MAT. H. CARPENTER,
Solicitor for the Milwaukee and Minnesota Railroad Compan , and for Graham & Scott, defendants.
LEVI HUBBELL,
Solicitor for Charles Howard, assignee of Sebre Howard, and for John S. Rockwell.

And same day, (October 7th, 1863,) this stipulation was filed:

Stipulation.

In circuit court of the United States for the 8th circuit and district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, complainants,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

It is hereby stipulated, for and on behalf of the complainants, that the Milwaukee and Minnesota Railroad Company, one of the defendants in the above action, may move for an order of this court discharging the receiver appointed in this action, and the complainants hereby assent to such discharge; and that the said Milwaukee and Minnesota Railroad Company may enter into the possession of the said railroad and other property appurtenant thereto, with such assets as shall be found in the hands of the receiver or under his control; and the complainants further waive all their rights, so far as the possession of the receiver is concerned, and assent that the said Milwaukee and Minnesota Railroad Company may take possession of the property and other things described in complainants' mortgage immediately.

THOMAS L. OGDEN,
Sol. for Comp'ts.

And same day, (October 7th, 1862,) the following stipulation was filed:

Stipulation.

In circuit court of the United States for the 8th circuit and district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, trustees, &c., complainants,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, def'n'ts.

It is stipulated by the parties to this cause, that the said court shall reform the decree entered in this cause, so as to enter a decree in the above entitled cause in favor of said complainants, according to the prayer of the bill of complaint, and liquidating the amount of interest due on the mortgage mentioned in said bill of complaint up to September 1, 1862, at two hundred and eighty thousand dollars. This stipulation is made in pursuance of an agreement, a copy of which is hereto attached and marked Exhibit No. 1, and made part of this stipulation; and this stipulation is made upon the express condition that the Milwaukee & Minnesota Railroad Company shall, with the assent of the court, have obtained possession of the railroad, franchises and other things in the receiver's hands in this

6 cause before the entering of said decree, or shall thus, simultaneously with the entering of each decree obtain, such possession.

Dated September 26, 1862.

MAT. H. CARPENTER,
Solicitor for Graham & Scott, and the Milwaukee & Minnesota Railroad Company and Alexander Fleming, defendants.
THOS. L. OGDEN,
Sol. for Comp'ts.
JAMES S. BROWN,
Of Counsel.
LEVI HUBBELL,
Solicitor for Sebre Howard, dec'd, and for Charles Howard, assignee of Sebre Howard's judgment.
LEVI HUBBELL,
Solicitor for John S. Rockwell.

Exhibit annexed to last stipulation.

This agreement made and entered into this 26th day of September, A. D. 1862, by and between the Milwaukee & Minnesota Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, trustees named in a certain deed of trust or mortgage, dated on or about the 17th day of August, 1857, made by the La Crosse & Milwaukee Railroad Company, a corporation duly authorized to make the same, to secure the payment of the sum of one million of dollars and the interest thereon, according to the bonds therein described and set forth, party of the second part,

Witnesseth, that whereas a suit or action has been commenced in the U. S. district court for the district of Wisconsin, by said party of the second part, for the foreclosure of said mortgage and a

7 entered therein, and the same has been duly appealed from by said party of the second part to the Supreme Court of the United States, where the same is now pending; and whereas it has become desirable for the interest of the railroad company and both parties that the litigation be closed as early as possible, with a view to laying the foundation for a general settlement of all interests involved therein, and the keeping the said La Crosse & Milwaukee railroad from being divided, to the great injury of the parties interested, including the city of Milwaukee; therefore, the parties hereto, in consideration of the premises and of one dollar paid by each party to the other, the receipt whereof is hereby acknowledged, do hereby agree and covenant to and with each other as follows, viz:

First. The party of the first part will execute in due form, and procure to be executed in due form, by A. Fleming, Sebre Howard, J. S. Rockwell and Graham Scott, (parties defendants to the suit or action hereinbefore mentioned,) their heirs, executors, assigns or representatives, stipulations, assents, memorandums or agreements, to be used in the Supreme Court of the United States, in the circuit court of the United States, embracing said district of Wisconsin, or in any other court where it may be necessary, giving and granting

to the said party of the second part a decree in their said suit or action, according to the prayer of their bill of complaint, and fixing the interest due upon said bonds on the first day of September, 1862, at the liquidated sum of two hundred and eighty thousand
8 dollars, together with their costs, charges, allowances and disbursements.

Second. The said party of the first part further covenants and agrees to and with the party of the second part, that for the purpose of securing the payment of said interest in arrear and other purposes, it will execute in due form of law with proper and apt covenants, and deliver to one or more trustee or trustees, a mortgage upon said railroad from Milwaukee to La Crosse, together with all its appurtenances and franchises, and all the rights and franchises of the said the Milwaukee & Minnesota Railroad Company, or to which in any manner the said party of the first part may be entitled, to secure the payment of bonds not exceeding in the aggregate amount one million of dollars; and the said mortgage shall be subject only to prior liens, mortgages and incumbrances upon the said railroad and property appertaining thereto, in the amount of five millions of dollars, including as part of said liens the mortgage to said second party first herein mentioned. The bonds to be issued under said mortgage for one million of dollars shall mature in the year 1872; shall bear interest at 6 per cent., payable semi-annually in the city of New York, on the first days of April and October in each year. The first coupon shall be payable October 1st, 1863.

And it is further covenanted and agreed by said party of the first part, that it will execute and deliver to said party of the second
9 part, their attorney or successors, one thousand bonds of two hundred and eighty dollars each, numbered from one (1) to one thousand (1,000) inclusive, secured by said mortgage as aforesaid, in trust for the satisfaction of the coupons in arrear and unpaid, embraced in the said decree hereinbefore stipulated for, and the same when paid are to be received in satisfaction of said coupons.

And it is further covenanted and agreed, that if said party of the first part shall fail to obtain the control of the whole of said railroad from Milwaukee to La Crosse within one year from the date hereof, then and in that case the payment of said arrears of interest shall be secured in bonds as hereinbefore described, but secured by a mortgage upon the portion of said railroad from Milwaukee to Portage City, and all its appurtenances, and the franchises of the said Milwaukee & Minnesota Railroad Company; and the whole amount of bonds then and in that case to be issued under the same shall not exceed the sum of six hundred thousand dollars, and be payable as hereinbefore set forth. And the said railroad from Milwaukee to Portage City, embraced in said mortgage and its appurtenances, shall be subject only to prior liens, mortgages, and incumbrances, included, as aforesaid, in the amount of two millions two hundred thousand dollars.

10 Third. The party of the first part further covenants and agrees, that whereas the stipulations following, for the discharge of the receiver appointed under the proceedings in foreclosure

aforesaid, are entered into by said party of the second part only upon the consideration of the decree hereinbefore stipulated for, being entered in said cause in due course of legal proceedings, under this agreement: Now, therefore, it is agreed that the party of the first part shall, with reasonable diligence, move, in conjunction with the party of the second part, to perform all the stipulations herein contained as to said decree; and if in due course of legal proceedings in said foreclosure suit, and within one year from the date of this agreement, for any reason whatever, said decree shall be refused and denied by the court wherein said decree in said cause should properly be entered—that is, if in consequence of the interference or opposition of any of the parties to said cause, or any other person or persons other than the party of the second part, said decree shall be denied, or if said decree shall be refused and denied by the court for any reason whatever—then the party of the first part shall immediately, on demand, deliver said road, franchises, and all other things appurtenant or belonging to said road, and from which said receiver shall have been discharged under this agreement, to said party of the second part; or if the interest stipulated to be paid, as set forth in article five of this agreement, or any portion thereof, shall
11 not be paid as therein provided, then, within sixty days after such default, the said party of the first part will forthwith surrender said road, rolling stock, and all its franchises and appurtenances, from which the receiver shall be discharged under this agreement or otherwise, to said party of the second part, their successor or successors, attorneys or agents, upon demand made by them or either of them for the same.

And the party of the first part stipulates that this agreement may be enforced by the proper court, as by consent of parties either in this cause or any other cause that may be pending in relation to said railroad.

Fourth. The said party of the second part, in consideration of the hereinbefore recited covenants, stipulations, and agreements to be kept and performed by the said party of the first part, agree that so soon as counsel can be heard in the district court of the United States for the district of Wisconsin, or in the circuit court of the United States embracing said district, or any other court where said motion can be made, the said party of the first part may move for an order of said court discharging said receiver, and the said party of the second part will, by written stipulation in said cause, assent thereto; and the party of the first part may enter into the possession of the said railroad and other property appurtenant thereto, with such assets as shall be found in the hands of the receiver, or under
12 his control.

Fifth. Said party of the second part further covenants and agrees, that if the said party of the first part shall execute and deliver the one thousand bonds of two hundred and eighty dollars each, as hereinbefore described, secured and subject only as herein stipulated, at any time within one year from the date hereof, the said party of the second part will receive the same, to be applied on said interest included in said decree; and no sale under said decree shall

be had without the consent of said party of the first part, its successors or assigns, so long as the interest on the said bonds issued under the mortgage given to the party of the second part first herein mentioned, becoming due on the 1st day of March, 1863, and thereafter accruing, the principal sum of one million of dollars secured by said mortgage, the interest upon bonds issued by the city of Milwaukee in aid of the building of that part of said railroad between Milwaukee and Beaver Dam, and the interest and sinking fund upon the first mortgage of the La Crosse and Milwaukee railroad from Milwaukee to Portage City, shall each and all be paid and discharged at the times respectively set forth for the payment of each and every of the same in the several deeds, mortgages, and agreements creating them liens upon said railroad, or within the sixty days in the said
13 several deeds specified.

It is understood, however, that the stipulation for decree hereinbefore provided for shall express that said stipulations are made subject to the condition that the said party of the first part shall, by the order or consent of the proper court, have previously obtained, or simultaneously with the entering of said decree shall obtain, possession, of the railroad franchises, and other things covered by the mortgages first herein mentioned in the possession of the receiver in said foreclosure suit.

MILWAUKEE & MINNESOTA R. R. CO.

[SEAL.] By MOSES KNEELAND, *President.*

GREENE C. BRONSON, [SEAL.]

JAMES T. SOUTTER, [SEAL.]

Trustees, by their attorney in fact, Prentis Dow.

Attest: D. W. KEYES, *Secretary.*

Letter to Bronson.

And afterwards, on October 8th, 1862, the following copy of letter was filed:

(Copy.)

MILWAUKEE, *7th Oct.*, 1862.

SIR: We have read the original of a stipulation purporting to be signed by yourself, through your attorney in fact, P. Dow, which was this day placed on file in the office of the clerk of the circuit
14 court of the United States for the district of Wisconsin, and a copy of which is herewith enclosed.

The other ostensible parties to the stipulation are the Milwaukee & Minnesota Railroad Company, so called, and certain alleged creditors of the La Crosse & Milwaukee Railroad Company. We are severally owners and holders of bonds in our several rights to the respective amounts undermentioned, secured by the mortgage in process of foreclosure in the suit in which the said stipulation is entitled and wherein you and James T. Soutter are complainants, as trustees; the mortgage referred to being the second mortgage (ordinarily so termed) of the eastern division of the La Crosse & Mil. railroad.

We are willing to believe that such stipulation has been made with-

out your personal consent or knowledge; but, to protect ourselves and to preserve our rights in the premises as bondholders, and fearing that our silence might, by you, be construed into consent, we hereby notify you that we protest against such stipulation, and the whole and every part thereof, and respectfully demand of you that you take immediate steps against the same being carried into effect.

We address this communication to you because we are informed that your co-trustee, Mr. Soutter, is out of the country.

We trust that you will advise us by telegraph, addressed to
15 Emmons & Van Dyke, Milwaukee, of your decision and proposed action.

RUSSEL SAGE	$87,000 00
SELAH CHAMBERLAIN	178,000 00
N. A. CONDREY	115,000 00
I. P. JAMES	7,000 00

Hon. Greene C. Bronson, *New York.*

Money Order.

October 14, 1862.—Receiver's report for month of September, 1862, filed.

November 18, 1862.—Receiver's report for month of October, 1862, filed.

Nov. 28, 1862.—Ordered, that the receiver pay out of the funds in his hands fifteen thousand dollars, on the judgment of Newcomb Cleveland, assigned to Selah Chamberlain, against the La Crosse & Milwaukee Railroad Company, to be receipted for by Messrs. Emmons and Van Dyke, att'ys for Chamberlain.

December 19, 1862.—Receiver's report for month of November, 1862, filed.

January 27, 1863.—Receiver's report for month of December, 1862, filed.

Motion of John S. Rockwell.

February 2, 1863.—This day came the defendant, John S. Rockwell, by John P. McGregor, his counsel, and moved the court upon the affidavits annexed, and herein filed, to strike the name of the said John S. Rockwell from the three several stipulations filed in this cause, on the 7th day of October, 1862, the one being without date, and the other two bearing date, respectively, September 26, 1862, and October 4, 1862—which said motion and affidavits are as follows:

Circuit court of the United States for the district of Wisconsin.

Greene C. Bronson and James T. Soutter, trustees,
vs.
La Crosse & Milwaukee Railroad Company *et al.*

And now comes the said defendant, John S. Rockwell, by John P. McGregor, his counsel, and moves the court, upon the affidavits annexed, to strike the name of the said Rockwell from the three several stipulations filed in this cause, on the seventh

day of October, 1862, one being without date, and the other two bearing date, respectively, September 26, 1862, and October 4, 1862.

JOHN P. McGREGOR,
For JOHN S. ROCKWELL.

Feb'y 2, 1863.

Affadavit of Jno. S. Rockwell.

In the circuit court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

John S. Rockwell, of Oconomowoc, in the county of Waukesha, in the State of Wisconsin, being duly sworn, deposes and says, that he is a party defendant in this cause, and has filed his answer therein; that his said answer was signed by Levi Hubbell, esq., as his solicitor and counsel, as he is informed and believes: that he employed the said Levi Hubbell as his solicitor and counsel, to act for him in the defence of this suit; that after the said Levi Hubbell had for some
17 time acted for deponent in that behalf, and some time about the latter part of May, 1862, said Levi Hubbell informed deponent that he, said Hubbell, had used up all the money paid him by deponent, as his counsel in this suit, and that he could not act further as deponent's counsel in this cause without further pay.

And in the same conversation said Hubbell informed deponent that he was acting as counsel for one Fleming, or persons in Albany, or in their interests; and deponent deems the interests of said Fleming and his friends, for whom said Hubbell was acting, as adverse to those of the deponent in this cause.

And then deponent then considered and believed that said Hubbell had deserted deponent and his interests in this cause.

That deponent never thereafter consulted, advised with or instructed said Levi Hubbell, or otherwise recognized him as his solicitor or counsel in this cause, or, in the subject-matter thereof, or expected or desired him so to do.

That deponent is informed and believes that the said Levi Hubbell never did thereafter act as the solicitor or counsel of this deponent in this cause, until he assumed to do so by signing three (3) certain stipulations or agreements, two of them respectively bearing date September 26th and October 4th, 1862, and the third
18 undated, all filed in this court on October 7th, 1862.

That the said Levi Hubbell never consulted or advised with this deponent in regard to the said stipulations or agreements, or any of them, or the subject-matter thereof. That deponent never had any knowledge or information of the said stipulations or agreements, or any of them, or of the negotiations which led to them, until after they had been executed by the said Levi Hubbell for deponent.

That deponent has always believed, and now believes, that said stipulations or agreements to be against the interests of deponent and those represented by the deponent in the premises. That he never assented thereto, but has always protested against the same, and against the right and propriety of the said Levi Hubbell to execute the same for deponent. That, from the facts above and other circumstances of which deponent is informed, he verily believes that said Levi Hubbell signed the said stipulations or agreements on deponent's behalf, not for the benefit of deponent, or on his retainer, but for the benefit and on the retainer of other persons, and well knowing that deponent had not assented and would not assent thereto.

Deponent further says, that at the time of the execution
19 and filing of the said stipulations, deponent was absent from the State, ill, in the State of New York; that he left this State about the 1st day of September, 1862, and returned about the 1st day of November, 1862, and that he has been ill and unable to attend to business ever since the 1st day of Nov., 1862, and is still too unwell to leave home to attend to any business.

JOHN S. ROCKWELL.

Subscribed and sworn to before me this 14th day of January, 1863.

SAMUEL BISHOP,
Justice of the Peace, Waukesha County, Wis.

Affidavit of Cyrus Hanley.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, *vs.* LA CROSSE & MILWAUKEE RAILROAD COMPANY *et al.* } Circuit court of the United States, district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Cyrus Hanley, of Milwaukee, being duly sworn, deposes and says, that the paper writing hereto annexed is a copy of the original contract now in his possession, under which the defence of the above suit was undertaken in the name of John S. Rockwell, for the
20 benefit of himself and others. That deponent is one of the persons who signed said contract.

C. HANLEY.

Subscribed and sworn to before me this 17th day of January, 1863.

C. W. HANLEY,
Notary Public, Milwaukee County, Wis.

Contract.

We, the undersigned, holders of 3d mortgage bonds of the La Crosse & Milwaukee Railroad Company, as set opposite our names, respectively, or being to that extent equitably interested in the

rights, franchises, and property of the Milwaukee & Minnesota Railroad Company, hereby agree with John S. Rockwell, esq., that we will contribute and pay the sum of five hundred dollars for the purpose of employing and paying Levi Hubbell, esq., as an attorney, for resisting in such manner as said Rockwell shall deem most desirable the foreclosure of the second mortgage on said La Crosse & Milwaukee Railroad, in the name of said Rockwell or otherwise, as may be deemed expedient, said payments to be made by each of us in proportion to the amount of bonds held by us, as expressed on this paper, and two hundred dollars to be paid on demand, and the remainder as the proceedings go forward.

It is hereby also agreed and understood that a compromise may be made with the owners of the second mortgage bonds, by and
21 with the consent of the holders of a majority of the bonds represented on this paper, but not otherwise; and in case of such compromise said Rockwell shall retain five per cent. of any money or valuable thing received by us, for the purposes of giving said Hubbell the option to take said five per cent. in lieu and stead of the $500 hereby agreed to be paid for his services.

It is hereby also agreed that all the signers of this paper will contribute and pay, in the proportions above stated, our share of all costs and expenses of any suit or suits prosecuted or defended by said Rockwell, for the purpose of defeating the foreclosure of said second mortgage, but no more than said $500 shall be paid for fees of attorneys or counsel in any such proceedings.

We further hereby agree that we will aid and assist, by our personal services and advice, all and any proceedings which said Rockwell shall lawfully undertake or prosecute for the purpose above expressed.

Alex.. Mitchell for S. & S.	$ 6,000
John W. Davis	18,000
Benj. Ferguson	10,000
Judd & Jess	25,000
Wm. E. Smith	39,000
C. Hawley	7,400
H. J. Nazro, & Co	3,000
Joseph Cary	1,000
H. Ludington & Co	1,300
Henry Williams	500
21 E. Cramer	6,500
J. W. Tweedy	3,700
Mary A. Hanley	1,500
Wm. E. Cramer	7,500
Hiram F. Story guard. for F. W. Hanley	1,500

I, John S. Rockwell, being the owner and holder of 23 bonds of $1,000, hereby agree with the parties to the above instrument, and in consideration thereof, that I will contribute and pay my equal proportion of the costs, expenses, and attorney's fees which may be incurred for the purposes mentioned in said instrument.

JOHN S. ROCKWELL 23,000

And on the sixth day of February, 1863, the following motion and stipulation was filed, in circuit court of the United States, for the 8th circuit and district of Wisconsin, in equity:

Motion of Mil. & Minn. R. R. Co. to discharge receiver.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE and MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE and MINNESOTA RAILROAD COMPANY, and others, defendants.

23 The Milwaukee and Minnesota Railroad Company, one of the defendants in the above entitled cause, by Mat. H. Carpenter, its solicitor, comes into court here, and moves the said court to make an order discharging and dismissing the receiver in the above entitled cause.

And the said Milwaukee and Minnesota Railroad Company, by its said solicitor, further moves said court foran order permitting said Milwaukee and Minnesota Railroad Company to enter upon and take possession of the railroad and other property, rights, privileges and franchises described, conveyed and mortgaged in and by the said trust deed or mortgage from the said La Crosse and Milwaukee Railroad Company to said Greene C. Bronson and James T. Soutter, mentioned in the bill of complaint in this cause, and of which said railroad and other property, rights, privileges, and franchises, Hans Crocker, esq., was appointed receiver, by order of the district court of the United States for the district of Wisconsin, in the above entitled cause on the 6th day of July, A. D. 1860.

And the said Milwaukee and Minnesota Railroad Company, by its said solicitor, further moves the court for an order that said Hans Crocker do render and pass his accounts to and with said court as such receiver, and referring it to a master or commissioner of this court to adjust said accounts, and ascertain the amount of funds in said receiver's hands; and that after such amount is ascertained
24 as aforesaid, or in such other way as said court may direct, that the fund in said receiver's hands be ordered to be paid over to said Milwaukee and Minnesota Railroad Company.

MAT. H. CARPENTER,
Sol. for the Mil. and Min. R. R. Co.

January 5, 1863.

In pursuance of certain agreements and stipulations between the parties hereto, I hereby stipulate and assent that said court make the orders above moved for.

THOMAS L. OGDEN,
Sol. for Complainants.
LEVI HUBBELL,
Sol'r for Chas. Howard, Assignee, &c.

January 5th, (fifth,) A. D. 1863.

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Docket entries.

February 19, 1863, receiver's report for month of January, 1863, filed March 9, 1863. This day came the city of Milwaukee, by its attorney, Mr. La Due, and presented a petition in writing herein filed, praying to be paid six hundred dollars for fees and expenses in and about this cause and the cause of Bronson, Soutter & Knapp. Whereupon it is ordered by the court that the receiver do pay to said petitioner six hundred dollars in full of said claim, to be receipted for by its said attorney. March 21, 1863, receiver's report for month of February, 1863, filed. April 22, 1863, receiver's report for month of March, 1863, filed. April 27, 1863, petition of administrators of John S. Rockwell, deceased, as follows:

25 *Petition of administrators of John S. Rockwell, dec'd.*

U. S. district court, district of Wisconsin.

JAMES T. SOUTTER and GREENE C. BRONSON
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et al.*

To the judge of the district court of the United States for the district of Wisconsin:

The petition of Lester R. Rockwell, Anna P. Rockwell, and A. L. Prichard, respectfully shows that John S. Rockwell, one of the defendants in the above suit, died intestate on the third day of February, A. D. 1863. That on the twenty-fourth day of March, A. D. 1863, letters of administration were duly issued to your petitioners by the county court of Waukesha county, in the State of Wisconsin, and that your petitioners have qualified according to law, and have entered on their duties as administrators of the estate of the said John S. Rockwell, deceased.

Your petitioners therefore pray the court that they may be substituted as such administrators' defendants in the above suit, in the place and stead of the said John S. Rockwell, &c.

LESTER R. ROCKWELL,
ANNA P. ROCKWELL,
A. L. PRICHARD,
By JOHN P. McGREGOR,
Their Attorney.

26 And same day an order of substitution was made and herein filed, as follows:

Order substituting Rockwell's admr's.

U. S. district court, district of Wisconsin.

JAMES T. SOUTTER and GREENE C. BRONSON
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et al.*

On reading and filing the petition of Lester R. Rockwell, Anna P. Rockwell, and A. L. Prichard, showing that John S. Rockwell, one

of the defendants in this cause, died intestate on the third day of February, A. D. 1863; and that the said Lester R. Rockwell, Anna P. Rockwell, and A. L. Prichard have taken out letters of administration on the estate of the said John S. Rockwell, deceased, and are now the legal administrators thereof; and on motion of John P. McGregor, of counsel, it is ordered that the said Lester R. Rockwell, Anna P. Rockwell, and A. L. Prichard, administrators, &c., be substituted as defendants in the place and stead of the said defendant, John S. Rockwell, deceased.

May 7, 1863.—This day came Mr. Carpenter, on behalf of the Milwaukee & Minnesota Railroad Company, and moved the court, on stipulations and agreements, for an order that the receiver be discharged, and the said company put into possession. And it appearing that this case is pending in the Supreme Court of the United States on appeal, the court thereupon doth refuse to hear said motion at this time.

27 May 20, 1863.—Receiver's report for month of April, 1863, filed.

And on June 10th, 1863, the following affidavits were filed:

Affidavit of S. Chamberlain.

The circuit court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others. } In equity.

In the matter of the motion of the Milwaukee & Minnesota Railroad Company for discharge of the receiver and for possession.

DISTRICT OF WISCONSIN, *ss:*

Selah Chamberlain, of the city of Cleveland, in the State of Ohio, being duly sworn, says that he is the owner, in his own rights, of one hundred and seventy-eight thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled cause, said bonds being at present lodged with third persons to secure indebtedness of this affiant; and this affiant further says that he was never consulted upon the subject of the stipulations and agreements upon which the above-entitled motion is founded; and that he has never directly or indirectly given his assent thereto, but, on the contrary, has protested against the same since the time when their existence first came to his knowledge.

S. CHAMBERLAIN.

Subscribed and sworn to before me, January 8th, 1863.

J. M. MILLER, *Clerk.*

Affidavit of Russell Sage.

28 The district court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others. } In equity.

In the matter of the motion of the Milwaukee Railroad Company for discharge of receiver and for possession.

DISTRICT OF WISCONSIN, *ss:*

Russell Sage, of the city of Troy, New York, being duly sworn, says that he is the owner, in his own right, and the holder of eighty-seven thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled cause; and he further says that he has never directly or indirectly given his assent to the stipulations and agreements upon which the above-entitled motion is founded, but on the contrary has protested against the same.

RUSSELL SAGE.

Subscribed and sworn to this 8th day of January, A. D. 1863, before me.

EDWARD KURTZ, *U. S. Com'r*

Affidavit of Frederick P. James.

District court of the United States, district of Wisconsin.

29 GREENE C. BRONSON and JAMES T. SOUTTER
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, impleaded with other defendants.

In the matter of the application of the Milwaukee & Minnesota Railroad Company for a discharge of the receiver and for possession.

DISTRICT OF WISCONSIN, *ss:*

Frederick P. James, of the city of New York, being duly sworn, says that Henry Vallette, of the city of Cincinnati, in the State of Ohio, is, as deponent is informed and verily believes, the owner and holder of forty-two thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled suits, and that there now exists a contingent agreement between the affiant and the said Vallette for the purchase, by this affiant, of the said forty-two thousand dollars of bonds. And affiant further says that he has had frequent conversations with the said Vallette upon the subject of the above-entitled suit, and of the application pending in which this affidavit is made; and this affiant, from such conversations, knows that said Vallette is utterly opposed to a change of possession of any part of the La Crosse & Milwaukee Railroad from the hands of the receiver to that of the aforesaid Milwaukee & Minnesota Railroad Company, so called.

FR. P. JAMES.

Subscribed and sworn to before me, April, 27th, A. D. 1862.
J. M. MILLER, *Clerk.*

30 *Affidavit of N. A. Cowdry.*

The circuit court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, *vs.* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others. } In equity.

In the matter of the motion of the Milwaukee & Minnesota Railroad Company for discharge of the receiver and for possession.

DISTRICT OF WISCONSIN, *ss:*

Nathaniel A. Cowdry, of the city of New York, being duly sworn, says that he is the owner and holder in his own right in part, and in part in trust for others, of one hundred and twenty-three thousand dollars of the bonds secured by the mortgage in process of foreclosure in the above-entitled cause. And affiant further says that he has never given his consent to the stipulations upon which the above-entitled motion is based, nor to his knowledge or belief have any of the parties, for whom he holds a portion of said bonds in trust, given any such assent, but, on the contrary, he and they have steadily protested against said stipulations since the time when the existence of them was first brought to their knowledge. And further affiant saith not.

N. A. COWDREY.

Subscribed and sworn to this 8th day of January, A. D. 1863, before me.

J. M. MILLER, *Clerk.*

Order putting Mil. & St. Paul R. R. Co. into possession.

June 12, 1863.—A petition in writing of the Milwaukee & St. Paul Railway Company having been presented to the court,
31 and filed in the case of Greene C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse & Milwaukee Railroad Company, and others, setting forth, in substance, that in pursuance of a decree in this court in that case, the western division of the La Crosse & Milwaukee Railroad, between La Crosse and Portage City, has been sold, and that said sale was confirmed and perfected, and that said Milwaukee & St. Paul Railway Company is a corporation organized under the laws of the State, as grantees under said sale, and praying to be allowed to operate the whole line of road between La Crosse & Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse & Milwaukee Railroad Company; and the said petition having been argued by Messrs. Cary and Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of Charles Howard, a judgment creditor of the La Crosse & Milwaukee Railroad Company, who is prosecuting a

judgment creditor's bill, and of the Milwaukee & Minnesota Railroad Company in opposition thereto; and the court being satisfied that the policy of the State, and the interests of the public, and of the creditors of the La Crosse & Milwaukee Railroad Company, require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division, between Portage City and Milwaukee, might affect the rights of the public and embarrass the free and proper operation of the whole road, as required by the original grant of char-
32 ter, and also prejudice the interests of creditors of the La Crosse & Milwaukee Railroad Company; and it being represented to the court that persons interested in the Milwaukee & St. Paul Railway Company own or control bonds included in the mortgage to these complainants, and the subject of this suit, to the amount of four hundred and seventy-eight thousand dollars, being nearly one half of the whole amount of said mortgage:

It is thereupon ordered by the court that the order appointing the receiver in this case be modified in manner following, subject to any further or other order rescinding, altering, or modifying this order now here made: that the receiver let the said Milwaukee & St. Paul Railway Company into possession of the eastern division of the La Crosse & Milwaukee railroad, between Portage City and Milwaukee, with its appurtenances, and property, and rolling stock thereto belonging; and that the said Milwaukee & St. Paul Railway Company, subject to the further order or orders of the court, operate said eastern division of said railroad in connexion with the said western division thereof, so that one continuous line of railroad between La Crosse & Milwaukee may be operated and conducted as directed in the original charter of the La Crosse & Milwaukee Railroad Company, without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise. And it is further ordered by the court that the said Milwaukee & St. Paul Railway Company shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts, and revenues, and also of the transactions, of the said Milwaukee & St. Paul Railway Company, and of its board of direct-
33 ors, in relation to the business and operations of the whole line of road. And that the said railway company shall, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the

said railroad; and that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received, from time to time, in payment of liens and debts of the said La Crosse and Milwaukee Railroad Company, according to their priorities and equities. And it is further ordered by the court, that before the said Milwaukee and St. Paul Railway Company be permitted to have possession under this order, the said company, by its constituted officers, shall enter into a bond to the United States for the use and benefit of all interested, with sureties, to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that said company will faithfully comply with this order of court, this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns and pay over the net revenues of said road, according to this order.

34 *Bond of Milwaukee and St. Paul R. Co.*

June 13, 1863. This day the bond of the Milwaukee and St. Paul Railway Company, given according to the order of the court of June 12th, 1863, with sureties approved by the court and filed, as follows:

Know all men by these presents, that the Milwaukee and St. Paul Railway Company, as principal, and David M. Hughes, Alexander Mitchell, Russell Sage, Fred. P. James, N. A. Cowdrey, Horace Galpin, William H. White, George W. Rodgers, Selah Chamberlain, and Asahel Finch, as sureties, are held and firmly bound unto the United States of America, for the use and benefit of all interested herein, in the penal sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said obligee, its assigns, or any party interested herein, to which payment well and truly to be made to the said obligee, the said obligees bind themselves, their heirs, executors, administrators, and assigns, firmly, by these presents.

Sealed with our seals and dated this twelfth day of June, in the year one thousand eight hundred and sixty-three.

The condition of this obligation is such, that whereas the district court of the United States for the district of Wisconsin, in a certain case therein pending, wherein Greene C. Bronson, James P. Soutter, and Shepherd Knapp are complainants, and the La Crosse and Milwaukee Railroad Company and others are defendants, made a certain order bearing date on the 12th day of June, A. D. 1863, directing the receiver to let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad, between Portage City and Milwaukee, with
35 its appurtenances, property, and rolling stock thereto belonging, and directing said Milwaukee and St. Paul Railway Company, subject to the further order or orders of said district court, to

operate said eastern division of said railroad in connection with the western division thereof, from Portage City to La Crosse, so that one continuous line of railroad between La Crosse and Milwaukee might be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hindrance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise:

And further directing that the said Milwaukee and St. Paul Railway Company shall, at all times, allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, daily access and examination of the records, books, and papers, accounts, proceedings, receipts, and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company and of its board of directors in relation to the business and operations of the whole line of road, and that the said railway company should, out of the revenues of said road, keep the said eastern division and all the rolling stock in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of net revenues of the said board:

36 Now, therefore, if the said Milwaukee and St. Paul Railway Company shall faithfully comply with said order of said court and all subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and shall keep said road and the rolling stock and property in good order, and shall manage and conduct the same to the best advantage of the public and the creditors of the La Crosse and Milwaukie Railroad Company, and shall make monthly returns and pay over the net revenues of said road according to said order, then this obligation to be null and void, otherwise to remain in full force and virtue.

The Milwaukee and St. Paul Railway Company—by its president:

D. M. HUGHES, *Pres't.*

[SEAL.]

D. M. HUGHES,	[SEAL.]
AL'X MITCHELL,	[SEAL.]
GEO. W. ROGERS,	[SEAL.]
F. P. JAMES,	[SEAL.]
N. A. COWDREY,	[SEAL.]
RUSSELL SAGE.	[SEAL.]
SELAH CHAMBERLAIN,	[SEAL.]
HORACE GALPIN,	[SEAL.]
W. H. WHITE,	[SEAL.]
A. FINCH.	[SEAL.]

Signed, sealed, and delivered in presence of—

JOHN W. CARY.

RUSSELL SAGE, JR., *Secretary.*

June 13, 1863. This bond and the sureties approved by the court.
A. G. MILLER.

37 *Motion to vacate order of 12th June, 1863.*

June 17, 1863. This day came the counsel of the Milwaukee and Minnesota Railroad Company, and moved the court to vacate the order made on the twelfth day of June, instant, putting the Milwaukee and St. Paul Railway Company into possession of this road between Portage City and Milwaukee, which motion is as follows:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON & JAMES T. SOUTTER
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et als.*

And now, on this day, to wit, the 17th day of June, A. D. 1863, of the term of said court of May, 1863, comes the Milwaukee and Minnesota Railroad Company, one of the defendants in the above entitled cause, by Mat. H. Carpenter, its solicitor, and moves the court here to set aside, vacate, and annul the order purporting to be made in said action on the 12th day of June, 1863, dispossessing Hans Crocker, the receiver in said action, of the line of the La Crosse and Milwaukee railroad, from the city of Milwaukee to the city of Portage, in the State of Wisconsin, and of all the rolling stock, fixtures, personal property, and franchises belonging to and used and connected with said line of road, and putting the same into the possession and under the control and management of the so-called Milwaukee and St. Paul Railway Company, with power and authority to use,
operate, and manage the same, collect and receive the tolls,
38 income, and profits arising from such use, operation, and
management, to the exclusion of the rightful owners of the same; for the following reasons:

1st. The said order was made without the application or consent, against the wishes, and in violation of the rights of said defendant.

2d. The said order was made when the said action was not before the court, when the solicitor of the said defendant was not present; and, in fact, was made a part of the proceedings and actions of another and different case, and relating to other and different property.

3d. The said Milwaukee and St. Paul Railway Company has no right, title, or interest, in or to the line of railroad, and other property so put into its possession; but, on the contrary, has vast interests, and has made important contracts and business arrangements, directly adverse and hostile to the interests of the real owners of the said line of railroad and the property connected therewith.

4th. The said order is unauthorized, illegal, and oppressive.

5th. The reasons assigned by the court for making said order have no foundation in fact; and, if well founded in fact, they confer no right upon the court to take the property of one party, without his con-

sent, and bestow it upon another, or to deprive the true owner of the possession and management of his own property.

6th. The Milwaukee and Minnesota Railroad Company is entitled to the possession, control, use, income, and tolls of said line of railroad, and other property, subject only to such mortgages and judgments as have a prior and valid lien thereon; and in case of the withdrawal of the possession and control of said line of road,
39 and the property connected therewith, from the receiver, the same ought, by legal right, to be placed in the possession and under the control of said Milwaukee and Minnesota Railroad Company, as the real owner of the same.

And the said defendant makes this motion to vacate, protesting that the said court had no jurisdiction over said petition, or right to make said order in the above entitled cause.

MAT. H. CARPENTER,
Sol. for Def't.

June 23, 1863. Receiver's report for month of May, 1863, filed July 18, 1863. Petition of the Mil. and Min. R. R. Co., for possession of the eastern division of the La Crosse and Mil. R. R., filed as follows:

40 *Petition of Mil. and Minn. R. R. Co. for possession.*

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, &c., *vs.* THE LA CROSSE AND MILWAUKEE RALROAD COMPANY, and others, defendants. } In equity.

To the judge of the district court of the United States for the district of Wisconsin, in equity:

Your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled suit, respectfully represents:

That the La Crosse and Milwaukee Railroad Company was from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit in form of bonds and mortgages, to aid said company in the construction and equipment of its said railroad, which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part, with and to said farmers, to pay

the interest that might accrue thereon, and that a large sum of said interest which said company was bound to pay as aforesaid had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by [illegible] had authority to do, to William Barnes, to secure the payment of said last named bonds and the interest thereon, in and by which said mortgage or deed of trust said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed, and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces or parcels of land which then were or thereafter might be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute, or be a part of, or appertain to said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether then made or built or to be built and made thereafter; and all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad; and also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described;" and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the

office of the secretary of state of the State of Wisconsin, and, as the plaintiff says on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

41 That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following—that is to say, all and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action, of whatsoever nature, which might be owned, or in which said company might have an interest, on such day as such company might first make default in the payment of the interest or principal, or any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter, the said Barnes caused said supplementary mortgage to be recorded, as, in the same offices as the said first named deed of trust or mortgage to said Barnes, was recorded as hereinbefore set forth; a copy of which said first mortgage, or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes, are attached hereto, and marked respectively Exhibit No. 1 and Exhibit No. 2.

That immediately thereafter said company commenced to deliver the said last named bonds so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter stated; and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by bona fide purchasers and owners, or have by

them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned. That about the 1st of February, A. D. 1859, the said company having made default in the payment of, or part of, the interest due on said bonds secured as aforesaid, the said William Barnes, in pursuance of the provisions of the laws of the State of Wisconsin then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement; and having previously given the notice required by law in that behalf, on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage to him, said Barnes, described; and the said William Barnes, trustee, then and there, at said sale, became the purchaser thereof, according to the provisions of the laws of said State of Wisconsin then in force in that behalf, at and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33,) no other person or body having made any bid whatever for the same; and that said mortgages thus became and were thereby foreclosed, according to the provisions of the laws of the State of Wisconsin in that behalf then in force; and that said Barnes, by virtue of said purchase, and the provisions of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises, and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds, secured by said mortgages.

And that afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last named company all the property and things by him purchased as aforesaid; and thereafter said company proceeded, and condacted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became, and ever since have continued, a corporation, under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company, so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

That said bondholders at said new organization elected and chose the following named persons directors of said Milwaukee and Minnesota Railroad Company, viz:

Russell Sage, N. J. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Still, and —— Battershall, and that said directors immediately thereafter organized

the said board of directors by electing and choosing Russel Sage president, N. J. Emmons vice-president, and Dwight W. Keys secretary of said Milwaukee and Minnesota Railroad Company; and that neither the La Crosse and Milwaukee Railroad Company, nor any subsequent incumbrancer or incumbrancers, nor any other person or persons, did, within one year after said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds according to law in that behalf.

That by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects of every nature and description, before then belonging to said La Crosse and Milwaukee Railroad Company wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale, (in the manner hereinbefore stated,) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments, which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors; and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company, which is apparently a line of incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described or intended to be embraced or described in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated; and has the right to collect, and enforce all actions and causes of action existing in favor of said La Crosse and Milwaukee Railroad Company, and conveyed by said trust deeds to said Barnes, or either of them.

42 Your petitioner further shows that the corporate existence of your petitioner was recognized and confirmed by an act of the legislature of the State of Wisconsin, approved March 6th, 1862, being chapter 28 of the private laws of 1862, to which your petitioner begs leave to refer as a part of this petition, said act entitled "An act in relation to a certain corporate election."

Your petitioner further represents that the railroad of the said La

Crosse and Milwaukee Railroad Company, which it was by its charter to and which it did build and equip, extend from the city of Milwaukee, in said district, to La Crosse, on the Mississippi river, in said district, and that that portion of the said railroad which is between the city of Milwaukee and a point in Portage City, in said State, is known as and called the eastern division of said road, and that part of said railroad from said point in Portage City to the said La Crosse is known as and called the western division of said railroad.

Your petitioner further represents that prior to the making and delivery of the said mortgages or trust deeds to said Barnes, as hereinbefore stated, the said La Crosse and Milwaukee Railroad Company, on or about the 30th day of June, A. D. 1854, made its certain mortgage or trust deeds to one Francis A. Palmer, as trustee, to secure the payment of certain bonds mentioned therein, in and by which mortgage or trust deed said company conveyed in trust or mortgage the said eastern division of its said railroad, together with the franchises of said company relating thereto; and that afterwards,

to wit, on the 18th day of February, A. D. 1856, after said
43 eastern division of said road had been completed, equipped, and operated by said company as a railroad, the said company made, executed, and delivered to said Palmer a second or supplementary trust deed or mortgage of that date to secure said bonds also mentioned therein, copies of which said two trust deeds or mortgages from said company to said Palmer are hereto attached, and marked, respectively, Exhibits Nos. 3 and 4; and that said two trust deeds or mortgages, taken together, constitute one incumbrance, known as the first or Palmer mortgage; and that the lien and incumbrance thereby created is the first lien and incumbrance upon any part of the railroad or franchises which were of the La Crosse and Milwaukee Railroad Company; and that the bonds mentioned in and intended to be secured by said mortgage are owned and held by *bona fide* purchasers and owners, and that said bonds and said mortgages to said Palmer constitute at present a valid lien and incumbrance on the property and things in said mortgages conveyed and described.

That the said La Crosse and Milwaukee Railroad Company also made, executed, and delivered the mortgages or trust deeds to Green C. Bronson and James T. Soutter, complainants in this cause, as stated and set forth in the bill of complaint in this cause, conveying and mortgaging the said eastern division and appurtenances and franchises of the La Crosse and Milwaukee Railroad company pertaining thereto.

That all the mortgages hereinbefore mentioned, except the said Barnes's mortgages, were confined to and created liens and incumbrances upon that part of said road only that is known as the
44 eastern division hereinbefore described and stated.

Your petitioner further shows that after the passage of an act of the legislature of the State of Wisconsin, which was approved October 10th, 1856, being chapter 121 of the general laws of said State, enacted in A. D. 1856, and which your petitioner refers to and makes a part of this its petition, to wit, on the 31st day of Decem-

ber, A. D. 1856, the said La Crosse and Milwaukee Railroad Company made, executed, and delivered to Green C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, a certain trust deed or mortgage, conveying the western division only of said railroad; and afterwards, on the 28th day of January, A. D. 1858, said company made, executed, and delivered to said trustees last above named a second or supplemental trust deed or mortgage, dated the day and year last aforesaid; and that afterwards, about the 5th day of December, A. D. 1859, said Bronson, said Soutter, and said Knapp, for the purpose of foreclosing said mortgages or trust deeds so given to them, exhibited in the district court of the United States for the district of Wisconsin, on the equity side thereof, their bill of complaint against said La Crosse and Milwaukee Railroad Company, your petitioner and others, and attached thereto as schedules copies of the said trust deeds or mortgages, a copy of which said bill of complaint, with the schedules thereto attached is hereto attached, and marked Exhibit No. 5, and made part of this petition.

45 Your petitioner further states that such proceedings were thereupon had in said district court in equity; that subpœna was duly issued and served on the said La Crosse and Milwaukee Railroad Company, and on your petitioner and others, defendants, and that thereupon and thereafter such proceedings were had in said district court in equity in said cause, that on the 18th day of May, A. D. 1860, the said court made an order in said cause, appointing a receiver of the said property and things mentioned in said mortgage, a copy of which is hereto attached, and marked Exhibit No. 5½; that the said court, on the 11th day of March, A. D. 1861, made an order of reference in said cause, which was commenced by the exhibiting of said last-named bill of complaint, a copy of which is hereto attached, and marked Exhibit No. 6, and that such proceedings were thereupon had; that on the 1st day of September, A. D. 1861, the said Winfield Smith, master, and Jerome R. Bingham and J. A. Lapham, special masters, made and filed their report in writing in said cause, a copy of which report is hereto attached, and marked Exhibit No. 7; and that thereupon the said complainants, Bronson, Soutter, and Knapp, by their solicitors, took and filed their exceptions in writing to said cause in said court, a copy of which exceptions is hereto attached, and marked Exhibit No. 8, and that thereupon such proceedings were had in said cause in said court; that on the 7th day of January, A. D. 1862, the said court made an

46 order or decree in said cause, of which a copy is hereto attached, and marked Exhibit No. 9, and that thereupon such proceedings were had in said cause in said court; that the said court, on the 13th day of January, A. D. 1862, made a final order or decree in said cause, a copy of which is hereto attached, and marked Exhibit No. 10; and thereafter, to wit, on the 25th day of April, A. D. 1863, the said Bronson, Soutter, and Knapp caused said final decree to be executed by the marshal of the said district, as appears by his report of sale on file in said cause, a copy of which is hereto attached, and marked Exhibit No. 11; and that thereafter, on the 5th day of May,

A. D. 1863, the said district court confirmed said sale by an order in said cause, of which a copy is hereto attached and marked Exhibit No. 12.

Your petitioner further shows that on the 26th day of September, A. D. 1862, your petitioner entered into a certain agreement, in writing, with the complainants in this cause, Greene C. Bronson and James T. Soutter, a copy of which is hereto attached, and marked Exhibit No. 13; and that afterwards, in pursuance of said written agreement, and in consideration of the premises, your petitioner, by its solicitor, Charles Howard, assignee of S. Howard, by his solicitor, and the said complainants, Greene C. Bronson and James T. Soutter, entered into written stipulations in said cause, entitled in this circuit court, then called and being the 8th circuit, and also entitled in the said cause in the Supreme Court of the United States, copies of which are hereto attached, and marked Exhibits Nos. 14 and 15, respectively.

47 And that afterwards, to wit, on the 7th day of October, A. D. 1862, your petitioner and said complainants, Bronson and Soutter, filed in the said circuit court the said stipulation, copy of which is exhibited, No. 15, and attached thereto, was a copy of the said written agreement, copy of which is Exhibit No. 13 hereto, by which stipulations and written agreement your petitioner became entitled to the immediate possession of said eastern divisions of railroad from Milwaukee to Portage, together with the appurtenances thereto belonging, and all the franchises which were of the La Crosse and Milwaukee Railroad Company pertaining thereto, and all the rolling stock upon the whole of said railroad, except the said 40 box-cars mentioned in the decree, a copy of which is Exhibit No. 10, hereto attached, and such proportion or share of rolling stock purchased and procured by the receiver in this cause, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the western division bears to the said eastern division of said road, since the appointment of the receiver in this cause.

Your petitioner further shows to your honor that the defendant, Selah Chamberlain, has no right to object to the prayer of your petitioner herein made, because it shows that said Selah Chamberlain is not a mortgage nor judgment creditor of the said La Crosse and Milwaukee Railroad Company, nor has he any right to, or interest in, or lien upon any of the said railroad, rolling stock, franchises, or other things mentioned in this petition.

Your petitioner further shows that the said La Crosse and Milwaukee Railroad Company, on or about the 26th day of September, 1857, being largely indebted to divers persons, and particu-

48 larly to one Newcomb Cleveland, and to the firm of Voze, Livingston & Co., of the city of New York, and designing and intending to hinder, delay, and defraud the said Cleveland and the said firm of Voze, Livington & Co., made, executed, and delivered to said Chamberlain a pretended lease, a copy of which is hereto attached, and marked Exhibit No. 16, and that said Chamberlain accepted said lease, and immediately thereafter entered into possession of all the

railroad property, franchises, and other things mentioned in said lease, then and there well knowing with what fraudulent intent, as hereinbefore stated, said company had made said lease, and intending to thereby aid said company in hindering, delaying, and defrauding its creditors, particularly said Cleveland and said firm of Voze, Livingston & Co.; and that thereafter, to wit, on the 2d day of October, A. D. 1857, the said La Crosse and Milwaukee Railroad Company, with the intent to bolster up said lease and consummate the fraudulent purpose for which said lease was made, as hereinbefore stated, confessed in the said district court, on the law side thereof, judgment against it in favor of said Chamberlain, without suit commenced or process served, for the sum of six hundred twenty-nine thousand and eighty-nine dollars and ½ cent damages, and fifteen dollars and fifty cents costs, with intent to thereby hinder, delay, and defraud the creditors of said company, and particularly said Cleveland and said firm of Voze, Livingston & Co., and to bolster up and carry out the fraudulent purpose of said lease, as hereinbefore stated, he, the said Chamberlain, well knowing when said judgment was confessed that it was so confessed, with said fraudulent intent on the part of said company and its board of directors.

49 Your petitioner further shows that while said Chamberlain was in possession of said railroad and other things under said lease, and after the confessing and docketing of said judgment in his favor, to wit, on the 7th day of October, A. D. 1857, said Newcomb Cleveland recovered judgment against said La Crosse and Milwaukee Railroad Company, in the said district court, for the sum of one hundred eleven thousand seven hundred dollars and 71 cents damages and costs; and that afterwards said Cleveland caused a writ of *fieri facias* to be issued on said judgment so recovered by him, and delivered the same to the marshal of said district in due form of law, who afterwards, and during the life of said execution, levied the same on the property and things mentioned in said lease; and that afterwards, to wit, on the 31st day of October, A. D. 1857, said Cleveland exhibited in said district court, on the equity side thereof, his bill of complaint against said La Crosse and Milwaukee Railroad Company and others, defendants, a copy of which bill of complaint, through the stating part thereof, is hereto attached, and marked Exhibit No. 16; that upon said bill of complaint, which was duly filed, subpœna was duly issued out of and under the seal of said district court in equity against said both last-named company and the said Chamberlain; and that thereafter such proceedings were had in said court in said cause upon said bill of complaint last above mentioned that both said last-named company and said Chamberlain appeared in said court and defended against said bill of complaint, and put in separate answers thereto, denying all the allegations of said

50 bill against the validity of said lease and judgment given and confessed to said Chamberlain; and the said Cleveland took issue upon said answers by replication thereto, and that proofs were taken by the respective parties upon the said issues so created; and that such proceedings were thereupon and thereafter had in said

cause in said court; that afterwards, to wit. on the 11th day of February, A. D. 1859, the said court, in said cause, over which said cause and the parties thereto and the subject-matter thereof the said court had full and complete jurisdiction, made and rendered its decree therein, a copy of which is hereto attached, and marked Exhibit No. 17, and made part of this petition.

Your petitioner further shows that said decree last above mentioned was, on the day and year last above written, duly enrolled in said cause in said court, and now remains of record there, unreserved and unannulled, and of full present force and validity; all of which matters, hereinbefore stated, your petitioner is ready to maintain and prove, as this court shall direct.

Your petitioner is advised and insists that by the said decree the said Chamberlain is estopped to claim or pretend as against your petitioners any right, title, or interest in or to the property, railroad, and franchises mentioned in said lease, either by virtue of said lease or said judgment so given and confessed to him, and that by said decree said lease and judgment were and are absolutely annulled and vacated.

Your petitioner begs leave to refer to the original bill of com-
51 plaint, and all the answers of the several defendants thereto, and to all the record and proceedings in this cause, as fully as if the same were all here again repeated and set forth.

Your petitioner therefore prays your honor to make an order in this cause discharging the receiver heretofore appointed herein, and ordering and declaring that all the property, railroad from the city of Milwaukee to the Portage City, being said eastern division, together with the appurtenances and personal property thereto belonging, and all the rolling stock used upon the whole of said railroad from Milwaukee to La Crosse, (except said 40 box-cars mentioned in the said decree, a copy of which is Exhibit No. 10, hereto attached, and such proportion or share of rolling stock purchased and procured by the receiver in this cause, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenue of the said western division bears to the said eastern division of said road since the appointment of the receiver in this cause,) and all the other property, real or personal, rights, privileges, and franchises, of which the receiver in this cause was in this cause ordered to take and have possession; and also that the said receiver be ordered to furnish and present his accounts as receiver in this cause for adjustment, and that the same may be referred to a master to be duly appointed to examine and report the same; and for an order directing said receiver to pay over to your petitioner such balance of funds in his hands as shall
appear upon said reference to said master, if any, to your pe-
52 titioner; and that your petitioner may have such other or further and different relief as the nature of its case may require, and as shall be agreeable to equity.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says that he is a director of the Milwaukee & Minnesota Railroad Company named

above, and makes this verification on its behalf; and that Moses Kneeland, who is the president of said company, is confined (from business) at his house by sickness. This affiant further says that he has read and knows the contents of the foregoing petition, and says, on information and belief, that the same is true; that the exhibits thereto attached are copies of the records of said several exhibits as made out by the respective public officers having custody of the originals, as this affiant is informed and verily believes.

A. FLEMING.

Subscribed and sworn to before me this 7th day of July, A. D. 1863.

EDWARD KURTZ,
U. S. Com'r, Dis'ct Wis.

We hereby waive the verification of the foregoing petition, and stipulate that it shall have precisely the same effect as the foregoing affidavit, were sworn to in due form.

N. J. EMMONS,
Solicitor, &c.
JAMES S. BROWN,
Of Counsel for Comp'l't, in Dis'ct Court.

53 *Exhibit No.* 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA,
State of Wisconsin:

No..... $.....

Know all men by these presents that the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof, in the sum of.....dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January

and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof, said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

....., *President.*

....., *Secretary.*

Registered and countersigned this ....., 185 .

....., *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether

now made or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements and utensils and other personal property which have been or may hereafter be procured for or used in connexion with said railroad; and also all and singular the rights, liberties, and privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights, liberties, privileges and fran-
54 chises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed, if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do, or hereafter may belong to said company, under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee, to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah, to the terminus of the road on the lakes or river St. Croix. To have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms and conditions herein expressed.

First. Until default shall be made in the payment of said bonds or some of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments, and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they re-

pectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into, and upon, and take possession of all and singular the railroad, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers, deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of said trustee, and said railroad company, of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding, to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time, during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee, all such further conveyances and assurances, and will do all such further acts and things, as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens and other burdens which either exist, or may hereafter arise, or be imposed upon the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all this right, title, and interest of, in and to the trust property.

Sixth. Said railroad company will, from time to time, pay all costs, charges, expenses and compensation of the trustee, in, about, or for the execution of the trust, and will in all things keep him fully indemnified and saved harmless of, from and against all damages, costs, charges and expenses which he may sustain, or be part to, in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter, until this trust is closed, the sum of twenty-five thousand dollars. With such sum as, from time to time, the same shall be paid, the said trustee shall from time to time purchase outstanding bonds, secured by this deed of trust, at the lowest price he can pur-
55 chase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany and Milwaukee respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased, belonging to said sinking fund, shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks and other agents as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto: Provided, such resignation, after reasonable notice to the president or secretary of said railroad company,

shall be approved by said supreme court. And on the death, removal or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee, and had executed this deed.

Eleventh. Said trustee hereby accepts and covenants and agrees, to and with said railroad company, faithfully to execute said trust.

In witness whereof, said railroad company has hereto af-]SEAL.] fixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

LA CROSSE & MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY,
Secretary of the La Crosse & Milwaukee Railroad Company.
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes, the said trustee.

CLARK, B.,
J. C. CARY.

Signed, executed and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse & Milwaukee Railroad Company.

EDWARD P. WHALING,
P. M. JOHNSON.

STATE OF NEW YORK,
County of Albany.

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds and other conveyances or leases, and of any contract, letter of attorney, or other writing, under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were

affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal, the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes ac-
56 knowledged that he executed the said instrument freely for the purposes therein stated; and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

[SEAL.]

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in and who executed the above instrument in writing, as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely, and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being my me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate

seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public, Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

57 *Exhibit No. 2.*

Indenture made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany and State of New York, trustee as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," did enact as follows:

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections, designated by odd numbers as aforesaid and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid: Provided, that the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: Provided

further, that the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: And provided further, that any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner, for any purpose whatever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

Sec. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

Sec. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other, and the said railroads shall be and remain public highways, for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

Sec. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road, respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

Sec. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department, at such price as Congress may by law direct: Provided, that until such price is fixed by law, the Postmaster General shall have the power to determine the same. (Approved June 3d, 1856.)

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3d, 1856."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, com-

Sec. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress, herein beforementioned, shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops
57 of the United States, and the United States mail shall be transported over said roads, under the direction of the Post Office Department, as provided in said act of Congress.

Sec. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed or which it may hereafter construct under the present charter; and in addition thereto, it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company; and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employés of the said company and other persons; and if any person so examined by the governor or other authorized person shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury. And for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed; and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State, (except special taxes for the improvement of streets and sidewalks,) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad; and said lands, granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company; and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation, as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

Sec. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

Sec. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other water craft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other water craft as it may require.

Sec. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge or otherwise dispose of all their right, title, claim, or demand of, in, or to any lands or interest in lands granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

Sec. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has, previous to the passage of this act, actually surveyed or located its line of railroad, it shall be the duty of

the La Crosse and Milwaukee Railroad Company to settle with such railroad company, upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy; and the latter company shall pay to any such company whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth; such payment to be made in money, bonds, stock, or lands, or in such other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then and in that case each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person; and in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners whose duty it shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

Sec. 11. This act and all grants herein contained shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

Sec. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use so soon as the said company shall so appropriate, take, possess, hold, or use the same.

Sec. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison. Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three

days, and all persons shall be permitted to subscribe to said stock on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount by deducting such sums as may be necessary *pro rata* from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon, in like manner as the other stock of said railroad company.

Sec. 14. It is hereby declared that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

Sec. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

Sec. 16. This act is hereby declared to be a public act, and the same shall immediately after the passage thereof be printed by the State printer, and when thus published, shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company, under its corporate seal, was, on the same day, deposited in the office of the Secretary of State:

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21st, 1858, between said company, of the first part, and said Barnes, as trustee, of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached:

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortgages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds, as therein particularly specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular

the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear:

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances:

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises and of the mutual promises herein contained, and the sum of one dollar paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from
61 thence to La Crosse, a distance of about two hundred (200) miles; and also the railroad of said company, commencing in the village of Madison, and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles; and also the railroad of said company, commencing in the village of Columbus, and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises, heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute or be a part of or appertain to said railroads, and including, also, all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which

lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements and utensils, and other personal property, which have been or may hereafter be procured for or used in connexion with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed and confirmed, and does by these presents grant, bargain, sell, convey and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and person and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed and equipped, and the particular lands granted by the foregoing acts of Congress, and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise and agree to and with the said party of the second part, and his successors, grantees and assigns, to warrant and forever defend the above described and granted premises, lands, tenements, and every part and parcel thereof, and also all the property, real, personal and mixed, now vested or acquired, or hereafter to be vested or acquired, and

also all the rights, property, real, personal and mixed, choses in action, privileges and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees or assigns, against the said party of the first part, and against all and every other person or persons, States or corporations, lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms and conditions herein expressed, and also expressed in the said indenture made and executed by and between the said parties on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof; and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to the same, and to use the same and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like
62 period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney, or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroads, and all the other property, real, personal and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal and mixed, and choses in action, with all the rights, liberties, privileges and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title and interest, whether legal or equitable, of said trustee and said railroad company, of, in and to the said property, rights, liberties, privileges and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the

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laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks and other agents, in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted and agreed by the said railroad company, that the provisions herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provisions thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof, said railroad company has hereto affixed its [SEAL.] LA CROSSE & MILWAUKEE R. R. COMPANY. corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal, the day and year first above written.

LA CROSSE & MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
[SEAL.] WILLIAM BARNES, *Trustee.*

Signed, sealed, executed and delivered in our presence as to the La Crosse & Milwaukee Railroad Company, by N. P. Stanton, president.
BYRON KILBOURN.
T. W. BEAVER.

Signed, executed and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse & Milwaukee Railroad Company.
EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed and delivered in our presence, as to William Barnes, the said trustee.
JOHN G. WHITE.
ISAAC EDWARDS.

63 STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me personally appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument; and the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Be it remembered, that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary, of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned; and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. Third street, in the city of Milwaukee, the day and year above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered, that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney or other writing, under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written.

[SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,

Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

Exhibit No. 3.

64 La Crosse and Milw. R. R. Co. to Francis A. Palmer: mortgage.

This indenture, made the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-four, between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted by the laws of the State of Wisconsin, party of the first part, and Francis A. Palmer, of the city of New York, party of the second part, witnesseth: Whereas the said La Crosse and Milwaukee Railroad Company, in pursuance of their corporate powers, are now engaged in constructing a railroad from the city of Milwaukee, on Lake Michigan, to La Crosse, on the Mississippi river, in the State of Wisconsin, and for that purpose, in part, have resolved to raise a sum of money by loan for the purpose of purchasing iron rails and machinery therefor, and of aiding in the construction of said railroad and putting the same into operation; and for the objects and purposes aforesaid, and in order to secure the payment and satisfaction of the moneys to be raised as aforesaid, it is proposed, and intended by the said parties of the first part, to execute, issue, and deliver five hundred bonds or writings obligatory, each for the sum of one thousand dollars, to be numbered, respectively, from number one (1) to five hundred (500) inclusive, and nine hundred bonds each for the sum of five hundred dollars, to be numbered, respectively, from number one (1) to nine hundred (900) inclusive, which bonds are to be in the following form:

65 UNITED STATES OF AMERICA,
State of Wisconsin.

No.———— $————

The La Crosse and Milwaukee Railroad Company.

Know all men by these presents, that the La Crosse and Milwaukee Railroad Company acknowledge themselves indebted to Francis A. Palmer, or bearer, in the sum of ———— dollars, which sum said company promise to pay the said Francis A. Palmer, or to the holder thereof, at the Broadway Bank, in the city of New York, on the first day of November, in the year one thousand eight hundred and seventy-four, and also interest thereon, at the rate of eight per

centum per annum, semi-annually, on the first day of each November and of each May ensuing the date hereof, until the said principal sum shall be paid on the presentation and delivery of the annexed warrants at said bank. This bond is one of a series of fourteen hundred bonds of the company aforesaid, of even date, to wit: 500 bonds for the sum of $1,000 each, numbered, respectively, from number 1 to number 500, inclusive, and 900 bonds for the sum of $500 each, numbered, respectively, from No. 1 to No. 900, inclusive, amounting in the aggregate to $950,000, secured by a mortgage executed in trust to Francis A. Palmer, of the city of New York, upon that part of the road of said company extending from its eastern termination in the city of Milwaukee to Portage City, being 95 miles in distance, together with the property and effects of said company on that part of the road. And said company further agree, that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special indorsement, or by delivery, as if the same was a note of hand payable to bearer.

66

The holder of this bond shall be entitled, at any time within ten years from the date hereof, to convert the principal sum into the stock of the said company at par on surrendering this bond, with the interest warrants not then due, annexed. In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, at Milwaukee, the first day of July, 1854.

————————, *President.*

————————, *Secretary.*

I hereby certify that the La Crosse and Milwaukee Railroad Company have executed to me in trust the mortgage referred to in the foregoing bond, and that I have caused the same to be recorded in the several counties wherein said mortgaged premises are situated; and that the foregoing is one of the several bonds described in and secured by said mortgage.

————————, *Trustee.*

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and in order to secure the payment of the said bonds and interest thereon accruing, and in consideration of one dollar paid to the said company by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said parties of the second part, his successor or successors in the trust hereby created, all their said road, from its eastern termination in the city of Milwaukee to Portage City, in the county of Columbia, being ninety-five miles in distance, constructed, and to be constructed, together with all and singular the railways, land procured or occupied, or so to be, for right of way within the limits aforesaid, together with bridges, fences, privileges,

67

rights, and real estate owned by said company for the purposes of said road, or which may hereafter be acquired or owned by them within the limits aforesaid, and all the tools, income, issues, and profits to be had from the same, and all lands used for and occupied within the limits aforesaid, by depots or stations, with all buildings standing thereon or which shall be procured therefor, together with all locomotives, engines and tenders, passenger cars and freight cars, shops, tools, and machinery, now owned or hereafter to be acquired by said company, and in any way belonging or appertaining to said railroad now constructed and to be constructed within the limits aforesaid, including all its property, real and personal, pertaining to said railroad within said limits, and all its rights, credits, and franchises thereunto appertaining.

But nothing herein contained shall be so construed as to prevent the said parties of the first part from selling, hypothecating, or otherwise disposing of any city or county bonds, or other securities received in payment of stock or otherwise; or of any lands or other property of said company not necessary to be retained for the roadway, depots, and stations now required for the construction or convenient use of that part of said road; nor from collecting moneys due said company on stock, subscription, or otherwise; nor shall
68 anything herein contained be so construed as to prevent the said parties of the first part from collecting and appropriating towards the construction, use, and repair of the remaining parts of said road westward towards the Mississippi river, all stock subscription, donations, or loans of money, lands or other property, which may have been or may hereafter be made for that purpose; but said parties of the first part shall have full right so to proceed, without let or hindrance from the said party of the second part; and the remaining portion of the said railroad, which by the said parties of the first part may be so constructed, shall be held in use by the said parties of the first part to their own benefit and behoof forever, so far as the claims of the said party of the second part, or his successors, might otherwise be construed as in conflict therewith. It being distinctly understood that the conveyance made by this indenture is only for so much of the present or hereafter to be acquired rights, interest, and property of the said company, parties of the first part, as are or shall be vested, or belong or appertain to that part of said railroad extending from the city of Milwaukee to Portage City aforesaid, and being in distance ninety-five miles; to have and to hold the said premises and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trusts: that is to say, in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest, or any of said bonds, at any time when the same may become due and payable according to the tenor
69 thereof, when demanded, then, after sixty days after such default (in case such principal or interest shall then remain unpaid,) upon request of the holder of such bonds, it shall and may be lawful for the said party of the second part, his successor in said trust or

assign, at his or their discretion, to enter into and upon and take possession of all and singular the whole or any part of the property and effects mortgaged as above expressed, or so intended to be; and, as the attorney in fact or agent of the said parties of the first part, by himself, or agents or substitutes duly constituted, have, and in his or their discretion use and employ the same, making from time to time all such repairs, alterations, and additions thereto as he or they may deem necessary, and receiving the tolls, rents, issues, and profits of said part of said railroad and appurtenances, and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of all said bonds remaining unpaid; or the said party of the second part, his successor in said trust and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid and unconverted into stock, shall cause the said premises, property, and effects hereby mortgaged, or intended so to be, or so much thereof as shall be necessary to and discharge the principal and interest of all such said bonds as may then be unpaid and unconverted as aforesaid, to be sold at public auction in the city of Milwaukee, in the State of Wisconsin as aforesaid, or in the city of New York, giving at least forty days' notice of the
70 time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in each of the cities aforesaid, and whenever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple of said premises, and such other instruments as may be necessary or proper for the property or effects so sold, which shall be a bar against the parties of the first part, their successors or assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises, property, or effects, or any part thereof; and said trustee shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings or any process be applied for or obtained by them, to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises, property, or effects hereby mortgaged or intended so to be, or any hereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any property or effects subsequently
71 to the date hereof acquired by said parties of the first part, and hereby intended to be mortgaged as hereinbefore expressed;

and the said parties of the first part hereby further covenant, as aforesaid that the money borrowed for the purposes aforesaid, upon the security of said bonds, shall be faithfully applied to the purchase and transportation of iron rails and machinery, and for the construction and extension of said road, and the expenses attending such loan and purchase, and that said rail and machinery so purchased shall be transported and used with due diligence in the construction, finishing, and furnishing of said railroad ; and it is hereby mutually agreed, and these presents are upon this express condition, that on payment of principal and interest of said bonds, at the time therein specified for the payment thereof, or the conversion thereof into stock, in manner aforesaid, the estate hereby granted to the said party of the second part shall be void, and the right to the premises, property, and effects hereby conveyed or granted shall revert to and revest in the said parties of the first part, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed, that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by him or them, when such agent is selected with reasonable discre-
72 tion; and that said party of the second part, his successor in said trust or assigns, shall be entitled to receive proper compensation for any labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises or any part thereof, or manage the same. And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, and interest, power, and control in the premises, property, and effects aforesaid, shall be divested, cease, and determine, and the same shall from thenceforth, for the purposes aforesaid, be vested in, and all and singular the trusts and duties hereinbefore mentioned and enumerated shall devolve upon, Isaac Seymour, of the city of New York, if he shall be living, without any further or other assurance or conveyance of or for the same ; and in case of the mental incapacity, death or resignation of the said Isaac Seymour after the trust hereby created shall have devolved on him, the said parties of the first part shall, or, in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may, apply to the supreme court of the State of Wisconsin to appoint a new trustee, being a resident of the city of New York, to supply his place ; and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interest hereby conveyed to, or vested in, the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be necessary,
73 both or either of the parties hereto shall execute any necessary releases or conveyances for that purpose.

In witness whereof, the parties of the first part have caused their

corporate seal to be hereto affixed, and these presents to be subscribed by the president. And the said party of the second part has set his hand and seal the day and year first above written.

[SEAL] STODDARD JUDD,
President.

Signed, sealed, and delivered in presence of—
ROBERT E. GILLOTT.
J. H. BURWELL.

FRANCIS A. PALMER. [SEAL.]

Sealed and delivered in presence of—
GEO. C. PETERS.
LEWIS N. GLOVER.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Lewis N. Glover, residing in the said city of New York, duly appointed by the governor of the State of Wisconsin, a commissioner for said State of Wisconsin in and for the State of New York, duly sworn and qualified to take testimony, acknowledgments, &c., to be used or recorded in said State of Wisconsin, do, by this instrument given under my hand and official seal, certify that on this thirtieth day of June, A. D. eighteen hundred and fifty-four, before me personally appeared Francis A. Palmer, known to me to be the same person who executed the foregoing instrument, and the said Francis A. Palmer acknowledged the signing and sealing of the said instrument to be his voluntary act and deed. In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

[SEAL.] LEWIS N. GLOVER,
Commissioner for Wisconsin, in New York.

74 STATE OF WISCONSIN, *City and County of Milwaukee, ss:*

On this fifth day of July, A. D. 1854, before me, Robert E. Gillett, a notary public in and for the said county of Milwaukee and State of Wisconsin, personally came Stoddard Judd, the president of the La Crosse and Milwaukee Railroad Company, to me known, being by me duly sworn, did depose and say that he resides in the town of Fox Lake, county of Dodge, in the aforesaid State of Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that he knows the corporate seal of said railroad company; that the seal affixed to the above and foregoing instrument in writing is such corporate seal; that it was so affixed by order of the board of directors of said railroad company, and that he signed his name thereto by the like order as president of said railroad company.

In witness whereof, I have hereto subscribed my name and affixed my notarial seal this fifth day of July, A. D. 1854.

[SEAL.] ROBERT E. GILLETT,
Notary Public, residing in the County of Milwaukee, State of Wisconsin.

Recorded July 5, A. D. 1854, at 10 o'clock a. m.

75 *Exhibit No. 4.*

La Crosse & Milw. Rail R'd Co. to Francis A. Palmer, trustee, & Unit. States Trust Company.—Collateral mortgage.

This indenture, made this eighteenth day of February, A. D. one thousand eight hundred and fifty-six, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly constituted as such by the laws of the State of Wisconsin, parties of the first part, and Francis A. Palmer, of the city, county and State of New York, party of the second part. Whereas the parties of the first part have heretofore duly executed and delivered to the party of the second part their certain indenture of mortgage, covering all their real and personal property and estate, appertaining to the eastern line or section of their road extending from the city of Milwaukee to Portage City, and being about ninety-five miles in length, which mortgage bears date the thirtieth day of June, A. D. one thousand eight hundred and fifty-four, and has been duly recorded in the office of the register of deeds in the several counties through which said road runs, the same having been made to the party of the second part in trust, to secure the payment of the principal and interest of certain first mortgage, eight per cent. coupon bonds of the said company of the denomination of one thousand dollars and five hundred dollars, bearing date the first day of July, A. D. one thousand eight hundred and fifty-four, and becoming due on the first day of November, A. D. one thousand eight hundred and seventy-four, respectively, with the interest thereon from date, at the rate of eight per cent. per annum, payable half yearly thereafter, which bonds amount
76 in the aggregate to nine hundred and fifty thousand dollars, and which the said company, by virtue of the said mortgage, contemplated to issue and negotiate for the purpose of raising money from time to time as the same might be wanted to aid in the construction of their said eastern line or section of road from the city of Milwaukee to Portage City, as by reference to the said mortgage, or the record thereof, will more fully and at large appear; and whereas the said company have heretofore issued and sold a portion of the said bonds thus secured, amounting to four hundred and fifty thousand dollars, two hundred and forty of which are for the sum of one thousand dollars each, and numbered from No. one to No. sixty-four, inclusive; No. seventy to No. ninety, inclusive; No. ninety-six to No. one hundred, inclusive; and No. one hundred and fifty-one to No. three hundred, inclusive; and four hundred and twenty of which are for the sum of five hundred dollars each, and numbered from No. one to No. four hundred and twenty, inclusive, and have built and equipped about sixty-one miles of the said eastern line or section of the road, leaving on hand in their possession unsold the residue of said bonds authorized to be issued under the said mortgage, amounting to five hundred thousand dollars, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number

ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred
77 dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, and which the company contemplate to sell and negotiate for the purpose of raising means to aid in the furnishing the remainder of their said eastern section or line of road; and whereas, in order to render the said residue of bonds more valuable by giving additional security for their ultimate payment and redemption, the said company have, by a resolution of their board of directors, duly passed on the sixth day of February, A. D. one thousand eight hundred and fifty-six, authorized and directed the creation of a sinking fund for that purpose, in manner and form as hereinafter provided, by annually setting apart from the net earnings of the road, and depositing with the United States Trust Company, of the city of New York, for the next nineteen years, the sum of twelve thousand dollars, which principal sum, together with the accumulations of interest, will form a capital sufficient to pay and satisfy the principal of the said residue of mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive, and from number three hundred and one to number five hundred, inclusive, as aforesaid; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, as aforesaid, on or before the ma-
78 turity thereof: Now, therefore, this indenture witnesseth, that the said parties of the first part, in addition to the several powers, covenants, liens, conditions and agreements, contained in the aforesaid indenture of mortgage heretofore executed and delivered as aforesaid, and as a supplementary thereto for the considerations aforesaid, and for and in consideration of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have covenanted, promised and agreed, and hereby do covenant, promise and agree, to and with the said party of the second part, his successor and successors, in the trust hereby created, and assigns, that for the further security and ultimate redemption of the said residue of the said mortgage bonds issued under the said mortgage, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive; and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, and amounting in the aggregate to five hun-

dred thousand dollars, they will annually, on or before the first day of November in each year hereafter, until the principal of the said residue of said mortgage bonds shall be fully paid, set apart and appropriated from the net earnings of the said road for the preceding twelve
79 months, and deposit with the United States Trust Company of New York, (an incorporated institution located and doing business in the city of New York,) or its successor, which said United States Trust Company of New York, or its successors, is hereby made, constituted, and appointed the trustee or receiver of the parties hereto, and of all the holders of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage as aforesaid, for the purposes hereinbefore mentioned, the just and full sum of twelve thousand dollars, which, together with the accumulations of interest thereon, will form a capital sufficient to pay and discharge the entire principal of the residue of the said mortgage bonds, amounting to five hundred thousand dollars, and numbered as last aforesaid, issued by virtue of the aforesaid mortgage on or before the maturity of the said last-mentioned bonds; the first setting apart and appropriation of said sinking fund to be made and deposited on the first day of November, A. D. one thousand eight hundred and fifty-six. And the said sinking fund, or several sums of money thus set apart and appropriated, with all accumulations of interest, shall, as soon as practicable thereafter, be laid out and invested by the said United States Trust Company, or its successor, in the purchase of the residue of the said mortgage bonds of the parties of the first part, before referred to and mentioned, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and
80 one to number one hundred and fifty, inclusive; and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, issued under the aforesaid mortgage whenever any or either of the said mortgage bonds can be purchased at or under par, and the accrued interest on the same at the date of the purchase, in case the securities of the said company before specified cannot be procured or purchased on the terms aforesaid, then and in that case the United States Trust Company, or its successor, shall, from time to time, invest the said fund, under the advice and direction of the board of directors of the parties of the first part, in such securities as shall be deemed most safe and profitable for the parties of the first part: Provided, however, that the obligation of the parties of the first part, to make such annual deposits to the said sinking fund as aforesaid, shall cease and determine, as soon as the funds and securities placed in the hands of the said United States Trust Company, or its successor, shall, with the accumulation of interest thereon, form a capital sufficient to pay and discharge, at the maturity thereof, all the outstanding unconverted bonds, num-

bered as last aforesaid, issued under the said mortgage. The said United States Trust Company, or its successor, shall, at all times, keep a proper and correct registry and account of the said several securities and funds to be held by them as aforesaid, and belonging to the said sinking fund for the inspection and examination of
81 the parties hereto, and any of the stockholders or bondholders of the road, and shall annually hereafter, during the continuance of the said trust, render to the parties hereto a written statement showing the true state and condition of the said sinking fund; and when any of the aforesaid securities of the parties of the first part shall have been purchased for the use of the sinking fund, the same shall, as soon as purchased, be cut, cancelled, and retired by the said United States Trust Company, or its successor, and be held and returned by them at the expiration of their trust. The interest coupons on said purchased bonds are, however, to be regularly paid to the said United States Trust Company, or its successor, by the parties of the first part, in the same manner as if held and owned by a third party for value; and in case of the resignation of the said United States Trust Company as such trustee or receiver, or its successor, or otherwise, the parties of the first part hereby reserve the right to supersede and revoke the aforesaid appointment of the said United States Trust Company, or its successor, and from time to time to appoint and substitute as a new trustee or receiver any other incorporated institution located and doing business in the said city of New York, and deemed by them fit and suitable for that purpose and said new trustee or receiver, or the successor thereof, and shall be vested with all the rights, estate, powers, and privileges, hereby conveyed to or vested in the said United States Trust Company; and the said United States Trust Company, or its successor, shall, upon request, forthwith assign, transfer, and deliver to such substituted trustee or receiver all the funds, property, and securities belonging to the said sinking fund so deposited with and held by them as aforesaid.
82 The said United States Trust Company, or its successors, shall apply the funds and available securities in their hands to the payment and redemption of the said residue of the said mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-five to number sixty-nine, inclusive; from number ninety-one to number ninety-five, inclusive; from number one hundred and one to number one hundred and fifty, inclusive; and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, at their maturity rendering the overplus, if any, to the parties of the first part, or their assigns; and in case the parties of the first part shall fail, neglect, or refuse to set apart, appropriate, and deposit with the said United States Trust Company, or its successor, the said several sums of money, or any or either of them, for the purpose of a sinking fund, at the times and in the manner hereinbefore particularly set forth and provided, then, at the expiration of sixty

days from and after such default, failure, neglect or refusal, in case such payment and appropriation to the said sinking fund shall not have been made, upon the request of the holder, of any of the residue of such mortgage bonds, two hundred and sixty of which are for the sum of one thousand dollars each, and numbered from number sixty-
five to number sixty-nine, inclusive; from number ninety-one
83 to number ninety-five, inclusive; from number one hundred
and one to number one hundred and fifty, inclusive; and from number three hundred and one to number five hundred, inclusive; and four hundred and eighty of which are for the sum of five hundred dollars each, and numbered from number four hundred and twenty-one to number nine hundred, inclusive, or upon the request of the said United States Trust Company, or its successor, the said party of of the second part, his successor or successors in the trust hereby created, or assigns, may enter into and upon and take possession of all or any part of said premises, real or personal estate, and property, and, as the attorney in fact or agent of the said parties of the first part, by himself or agents or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto; and after deducting the expenses of such use, repairs, alterations, and additions, apply the proceeds thereof to the payment of the principal and interest of the residue of the said bonds, numbered as last aforesaid and issued under the said mortgage, remaining unpaid. And the said party of the second part, his successor or successors in the trust hereby created, or assigns, on the written request of the holders of at least one-half of the said residue of the said mortgage bonds, numbered as last aforesaid, issued under the mortgage then outstanding, unpaid, or unconverted into stock, and not purchased and deposited for the sinking fund as aforesaid, shall cause the said premises, real and personal estate, and property, rights, and franchises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all the said
residue of such mortgage bonds, numbered as last aforesaid,
84 as may be then unpaid and unconverted and not purchased,
and deposited as aforesaid, to be sold at public auction, in the city of Milwaukee, in the State of Wisconsin aforesaid, or in the city of New York, giving at least ninety days' previous notice of the time, place, and terms of such sale, and of the real and personal property, and estate, rights, and franchises, to be sold, by publishing the same in two newspapers of good circulation in each of the cities of Milwaukee and New York as aforesaid, and wherever else required by laws, and execute and deliver to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest or claim of, in, or to the said premises, real and personal estate, and property, rights, and franchises, or any part thereof. The amount of the bid, or purchase money, on the said sale may be paid and satisfied in whole or in part by the residue of the said outstanding mortgage bonds, numbered as last aforesaid, or any of them,

and the same shall be taken and received in whole or in part payment and satisfaction by the party of the second part, his successor or successors in the trust hereby created, or assigns, according to their value, to be ascertained and determined by the net amount arising from said sale, together with the amount of unapplied cash assets belonging to the sinking fund as compared to the amount of the outstanding, unconverted, and unpurchased residue of said bonds, numbered as last aforesaid under the said mortgage as aforesaid. And the said party of the second part shall, after deducting from the proceeds of said sale the cost and expenses thereof and
85 of managing such property, apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of the said outstanding mortgage bonds numbered as last aforesaid, issued under the said mortgage, and not converted nor purchased for the sinking fund, nor used in payment of said bid as aforesaid, and shall pay over and restore the remainder of the said proceeds to the parties of the first part, their successors or assigns. It being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process, be applied for or obtained by them to prevent such entry or sale as aforesaid. And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance or conveyances of the premises, or any part thereof, to the said party of the second part, his successor or successors in the trust hereby created, or assigns, for more fully carrying into effect the objects hereof, particularly for the conveyance of any rights, interest, or property, subsequently to the date hereof acquired by said parties of the first part, and comprehended or intended so to be in the description and terms of this instrument. And the said parties of the first part hereby further covenant, as aforesaid, that the money borrowed for the purpose aforesaid upon the security of the residue of the said mortgage bonds, numbered as last aforesaid, issued under the said mortgage, shall be faithfully applied to the purchase and transportation of iron rails and machinery,
86 and for the construction and extension of said road and the expenses attending such loan and purchase; and the said rails and machinery so purchased shall be transported and used with due diligence in the construction, finishing, and furnishing said railroad. And it is mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of the residue of the said mortgage bonds numbered as last aforesaid, and issued under the said mortgage, or on the conversion thereof into stock in manner aforesaid, the powers, rights and estate hereby granted to the said party of the second part, his successor or successors in the trust hereby created, and assigns, shall be void. And when the principal and interest of all the residue of said mortgage bonds issued under the said mortgage shall be fully paid, and the residue of said bonds numbered as aforesaid duly cancelled, the said party of the

second part, his successor or successors in the trust hereby created, or assigns, shall, upon the request of the parties of the first part, or their assigns, duly execute and acknowledge payment and satisfaction of the agreement, and shall deliver up the same to the parties of the first part, or their assigns, to the end that the same may be duly and properly satisfied, cancelled, and discharged of record. And it is also further mutually agreed that the said party of the second part, his successor or successors in the trust hereby created, or assigns, shall be accountable only for reasonable diligence in the management of the several trusts and matters herein and hereby committed to his and their care, control and authority, and shall not be responsible for the act of agent or attorney employed by him or them, when
87 such agent or attorney is elected with reasonable discretion. And that the said party of the second part, his successor or successors in the trust hereby created, shall be entitled to receive proper compensation for any labor or service performed by him or them in the discharge of his trust, in case he or they shall be compelled to take possession of said premises and real and personal property and estate, or any part thereof, to manage the same. And it is further mutually agreed that in case of the death, mental or civil incapacity, or resignation of the party of the second part, all his estate, rights, interest, power and control in the premises shall be divested, cease and determine, and the said parties of the first part shall, or in their default to take proceedings therefor for thirty days, the holders of a majority of said outstanding mortgage bonds issued under the said mortgage, may apply to the supreme court of the State of Wisconsin to appoint in his place a new trustee, being a resident of the city of New York, and thereupon, and upon his acceptance of the trust, such new trustee shall become vested for the purposes aforesaid with all the rights, estate, property and interest hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance of the same. But if the same shall be necessary, both or either of the parties hereto shall execute and deliver any other or further releases, agreements or conveyances for that purpose, to the end that the true intent, object and meaning of this instrument may be fully and faithfully carried into effect.

In witness whereof, the said parties of the first part, on the day and year first aforesaid, by order of the board of directors, have hereunto caused to be affixed their corporate seal, and these
88 presents to be signed by their president, and countersigned by their secretary, at Milwaukee, Wisconsin; and the said party of the second part has also hereunto set his hand and seal.

BYRON KILBOURN,
President of La Crosse & Milwaukee Railroad Co.

Attest: LEVY BURNELL, *Sec'y.*
[CORPORATE SEAL.]

F. A. PALMER, *Trustee.* [SEAL.]

The words "numbered as last aforesaid" interlined between 11 and 12 lines of 5th page before execution.

In presence of—

NELSON MCNEAL.
CHAS. E. JENKINS.

Witnesses to signature of F. A. Palmer, trustee, W. A. Woodward, John J. Hill.

STATE OF WISCONSIN,
Milwaukee County, ss:

On this 18th day of January, 1856, came before me Byron Kilbourn, president of La Crosse and Milwaukee Railroad Company, and Levi Burnell, secretary of said company, to me personally known, and severally acknowledged that they had executed the foregoing conveyance or written instrument for the uses and purposes therein expressed.

CHAS. E. JENKINS,
County Judge, Milw. Co., Wis.

STATE OF WISCONSIN,
County Court, Milwaukee County.

I, Matthew Keenan, clerk of said court, do hereby certify that the Hon. Chas. E. Jenkins, whose name appears above, and before whom the foregoing acknowledgment was made, was at the date
89 thereof, and now is acting judge of the county court aforesaid, duly elected and qualified; and further, that I am well acquainted with the handwriting of said judge, and verily believe the *the* signature purporting to be his, genuine. In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 18th day of February, A. D. 1856.

MATTHEW KEENAN, *Clerk.*

[SEAL OF COURT.]

NEW YORK CITY, COUNTY, AND STATE, *ss:*

On this 29th February, 1856, before the undersigned, a commissioner in and for the said State, residing in the city of New York, appointed by the governor of the State of Wisconsin, under the laws of said State, with full power and authority to take the acknowledgment and proof of deeds, and to be used or recorded in said State of Wisconsin, appeared Francis A. Palmer, known to me to be the person named in the foregoing indenture, and acknowledged that he executed the same freely as his act and deed as trustee, for the uses and purposes therein mentioned.

Witness my hand and official seal.

[OFFICIAL SEAL.] W. A. WOODWARD,
Commissioner for Wisconsin in New York.

Recorded March 17th, 1856, at 8 o'clock a. m.

[REC. CCLXVII, D. T. 1863.]—5

Exhibit No. 5.

90 District court of the United States, district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPHERD KNAPP, trustees, &c.,
aga't
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee; Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewit C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Santhoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis.

To the judge of the district court of the United States for the district of Wisconsin:

Greene C. Bronson, James T. Soutter, and Shepherd Knapp, trustees, as hereinafter mentioned, all of whom are residents of the city of New York and citizens of the State of New York, bring this their bill against La Crosse and Milwaukee Railroad Company, a corporation duly established under the laws of the State of Wisconsin, J. Albert Helfenstein, trustee; Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery
91 Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewit C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Brodhead, Charles Quentin, August Santhoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, all whom are residents and citizens of said State of Wisconsin, and Selah Chamberlain, who is a citizen and resident of the State of Ohio, Newcomb Cleveland, who is a citizen and resident of the State of Illinois, Joshua Hathaway, who is a citizen and resident of the State of Georgia, and William Gemmell, who is an alien and a resident of Scotland, in the kingdom of Great Britain, and a subject of the Queen of Great Britain.

And thereupon your orators complain and say that the several acts and doings hereinafter stated and set forth, so far as they purport to be the acts or doings of your orators, are true of their own knowledge, and as to all the other matters and things hereinafter stated and set forth, your orators are informed and verily believe that the same are true.

Under and in pursuance of an act of the legislature of the State of Wisconsin entitled an act to incorporate the La Crosse and Milwaukee

Railroad Company, approved April 2, 1852, the La Crosse and Milwaukee Railroad Company became and was a body politic and corporate by that name and style, with all such powers, rights, privileges, franchises, and immunities as are mentioned in said act, and particularly with the power, right, privilege, and franchise of constructing and using a railroad in said State of Wisconsin
92 from La Crosse, in the county of La Crosse, to some point in the city of Milwaukee, a distance of about two hundred miles, which said company has ever had and still has its office and principal place of business in said city of Milwaukee; and as your orators are advised and believe, said corporation is a citizen of the State of Wisconsin within the meaning of the Constitution and laws of the United States relating to the jurisdiction of the federal court.

By several other acts of said legislature relating to said company, and by the acts concerning or relating to railroad companies in general in said State of Wisconsin, all passed subsequent to said act of incorporation, and before the making of the trust deed hereinafter mentioned, said company became entitled to the additional powers, rights, privileges, franchises, and immunities mentioned in said several acts; to all of which said acts or statutes, including the original act of incorporation, and also to an act of the Congress of the United States entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3, 1856, and being chapter 43 of the laws of 1856, your orators hereby refer and pray that the same may be taken and received as part of this bill of complaint as fully as if the same were herein recited and set forth at large.

Among the acts to which reference is above made, your orators particularly refer to said act of Congress by which, among other things, certain lands were granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City, to the St. Croix river or lake, and from thence to the west end of Lake Superior and to Bayfield; and
93 to the act of the legislature of Wisconsin approved October 11, 1856, by which said company was authorized and empowered, among other things, to construct and operate a railroad from Madison, in the county of Dane, and from the village of Columbus, in the county of Columbus, by the way of Portage City, to St. Croix river or lake, and from thence to the west end of Lake Superior and to Bayfield, and by which act all the lands which have been granted to said State of Wisconsin by the government of the United States to aid in the construction of the railroad in question were, upon certain terms and conditions therein mentioned, granted to said La Crosse and Milwaukee Railroad Company, which said act was accepted and agreed to by said company within five days after the passing of the same, to wit, on the eleventh day of October, 1856, by a resolution adopted by the directors of said company, and a copy of which resolution, duly certified by the secretary of said company under its corporate or common seal, was, within said five days, and on the day

last mentioned, deposited in the office of the secretary of state of said State of Wisconsin.

Soon after the passing of the original act of incorporation said company was organized and commenced the construction of the railroad therein mentioned, from La Crosse to Milwaukee, and continued said work until the making of the trust deed hereinafter mentioned, at which time said company had completed and put in operation a portion of the road from a point in the city of Milwaukee to Portage City, or near that place, a distance of about ninty-five miles.

94 On or about the thirtieth day of December, in the year of our Lord 1856, the board of directors of said company adopted resolutions to make the trust deed to your orators and to issue bonds, as hereinafter mentioned; a true copy of which said resolutions (with the exception of that part of the second resolution which follows the words "Now, therefore, this deed witnesseth," which part is in the same words with the corresponding part of said trust deed, and including all the remaining part of said deed down to the words "In witness whereof") is hereto annexed, and marked Schedule A, and which resolutions your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and on or about the thirty-first day of December, in the year of our Lord 1856, said La Crosse and Milwaukee Railroad Company made its certain trust deed of that date, in the nature of a mortgage, between said company, as party of the first part, and your orators, as parties of the second part; which deed was duly sealed with the corporate or common seal of said company, and subscribed by the president and secretary of said company, and was also subscribed by your orators, and delivered said deed to your orators, by which said deed said company, after reciting at large said act of Congress and said act of the legislature of Wisconsin, of the 11th of October, 1856, and after also reciting the determination of the company to borrow a sum of money not exceeding ten million of dollars, and to issue the bonds of the company for the repayment of the said moneys, the form of which bond was recited and set forth at large in said deed, and after also reciting the determination of the company to secure the payment of the bonds in the manner therein

95 provided, did, for the purpose of securing the payment of said bonds and the interest warrants on coupons thereto annexed, and upon the trusts in said deed mentioned and contained, grant, bargain, sell, convey, and confirm to your orators all and singular the several tracts, pieces, or parcels of land which then were or might thereafter be or constitute the site of the railway, turnouts, engine-houses, workshops, depots, and other buildings, and all the lands and real estate which then constituted or might thereafter constitute or be a part of the roads of said railroad company, from Madison, by way of Portage City, to the St. Croix river or lake, and from Portage City to La Crosse; and all the other property, real and personal, mentioned in said deed, and also all the rights, liberties, privileges, and franchises of said company relating to said roads, and

all the lands granted or intended to be granted to said company under or by virtue of said act of Congress and said act of the legislature, so far as said lands pertained or were applicable to the construction of said road from Madison, by way of Portage City, to St. Croix river or lake, to have and to hold the same to your orators, and the survivors or survivor, successors and successor of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common, in trust, nevertheless, and upon the trusts, terms, and conditions in said deed expressed, as by said in part recited deed now in possession of your orators, and ready to be produced as the court shall direct, will more fully and at large appear; a true copy of which said deed, with the exception of said act of Congress
96 and said act of the legislature of the State of Wisconsin of the 11th of October, 1856, which are therein recited at large, is hereunto annexed, and marked Schedule B, and which copy your orators pray may be taken and received as a part of this their bill of complaint; which said trust deed, after having been duly acknowledged by all the parties thereto, was duly recorded in the office of the secretary of state of said State of Wisconsin, on the thirteenth day of January, in the year of our Lor d1857, in the book of railroad mortgages, pages 92 to 108, inclusive, reference to which said record is also hereby had and made.

Afterwards, and on or about the first day of February, in the year of our Lord 1857, said La Crosse and Milwaukee Railroad Company made its several negotiable bonds of that date in the form mentioned in said trust deed, and sealed the same with the corporate or common seal of said company, and caused the names of its president and secretary to be thereto affixed, each of which bonds was for the payment of the principal sum of money therein mentioned to the bearer of said bonds on the first day of February, in the year of our Lord 1877, with interest at the rate of seven per centum per annum, payable in the city of New York, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons to said bonds annexed. Interest warrants or coupons for the payment of said interest at the times above mentioned were annexed to each of said bonds, and all of which bonds were severally for the payment of the principal sum of one thousand dollars, except one hundred bonds which were sev-
97 erally for the payment of the principal sum of five hundred dollars. Parcels of said bonds were from time to time registered and countersigned by your oratars, and the schedule hereto annexed, and marked C, shows the several times when such registry and countersignings were made, with the numbers and denominations of the bonds so registered and countersigned on each occasion, which schedule your orators pray may be taken and received as a part of this their bill of complaint.

Afterwards, and about the several times when said bonds were so registered and countersigned by your orators, said company sold, issued, and delivered said bonds to a great number of individuals, partnerships, firms and corporate bodies, who thereupon and thereby

became the bearers and holders of said bonds, and entitled to the moneys therein mentioned and agreed to be paid; and the bonds so made, registered and countersigned, and so sold, issued and delivered, amounted in the aggregate to four millions of dollars of principal money, and no more, and have (or most of them) come by transfer into the hands of a large number of persons, some of whom are unknown to your orators, and are too numerous to be made parties to this action.

After two thousand five hundred of said bonds, of one thousand dollars each, amounting to two and a half millions of dollars, had been so sold, issued and delivered, and on or about the twenty-eighth day of January, in the year of our Lord 1858, said La Crosse and Milwaukee Railroad Company, in pursuance of its covenants in said trust deed, for further assurance and for the purpose of better and more
98 effectually securing the payment of the bonds which had already been issued, and such bonds as should thereafter be issued, to the amount in all of four millions of dollars, made its certain indenture or deed of that date, sealed with the corporate or common seal of said company, and subscribed by its president and secretary, and delivered said indenture or deed to your orators, and thereby said company did grant, covenant and agree to and with your orators as is stated and contained in said indenture or deed, a true copy o which said indenture is hereto annexed and marked Schedule D, to which your orators refer, and pray that the same may be received and taken as a part of this their bill of complaint, which said indenture or deed, after having been duly acknowledged, was duly recorded in the office of the secretary of state of said State of Wisconsin, in the book of railroad mortgages, on pages 321 to 326, both inclusive, on the 11th day of February, 1858, to which record your orators also refer for the contents of said indenture.

Soon after the making of said trust deed, and in January, 1857, said company commenced the construction of that part of said road from La Crosse to Milwaukee which lies or is situate between La Crosse and Portage City, and completed the same from Portage City to La Crosse, a distance of about one hundred and four or five miles, in the month of October, 1858. A part of the road so constructed, to wit, that part which lies or is situate between Portage City and Tomah, otherwise called the junction, a distance of about sixty-one miles, is also part and parcel of said road from Madison, by way of Portage City, to the St. Croix river or lake, to aid in the con-
99 struction of which lands were granted to the State of Wisconsin and to said company as hereinafter mentioned: but neither said company nor your orators has or have obtained any deed or other evidence of title to any portion of said lands, or anything further than may be found in the act of Congress and the act of the legislature of Wisconsin of the 11th of October, 1856, hereinbefore mentioned. The governor of said State of Wisconsin has refused, and still refuses, to give the certificate required by said act to the Secretary of the Interior, and wholly denies that either said railroad company or your orators are entitled to any lands by reason or on ac-

count of having constructed said road from Portage City to Tomah, as hereinbefore mentioned.

About the first of October, in the year 1857, one Selah Chamberlain, who, for several years last past, resided most of the time in the State of Wisconsin, and who, if not a citizen of that State, is a citizen of the State of Ohio, under some agreement or arrangement between himself and said railroad company, made subsequently to the right, title and lien of your orator, and in terms subject and subordinate to the rights, title and lien of your orators, entered into the possession, use, and enjoyment of all that portion of the railroad of said company which had been completed, which portion extended from the city of Milwaukee westward to and beyond Portage City, and from time to time, as sections of the road further west were completed, entered into the possession, use, and enjoyment of the same; and ever since said railroad was completed to La Crosse, as above mentioned, has been, and still is, in the exclusive possession, use, and enjoyment of the entire road from Milwaukee to La Crosse, with all
100 things appertaining to the same; and said Chamberlain, during all the time aforesaid, has taken and received to his own private use and benefit, and still does take and receive to his own private use and benefit, all and singular the rents, issues, profits and income of said railroad, with its equipments and appurtenances.

On the first day of August, in the year 1858, said railroad company utterly failed, and made default in the payment of the half year's interest which then became due and payable on said bonds, and wholly neglected and refused to pay the interest warrants or coupons which became due and payable on that day; which said default in payment has ever since continued, and no part of the interest which should have been paid on said first day of August has ever been paid by said company. A small number, about forty or fifty, of the interest warrants or coupons which became due on said first day of August were, within a few months afterwards, surrendered or delivered by bondholders to some officer of the company on some security or engagement by the company to pay the amount in future, but such payment has not been made, nor has said interest warrants or coupons ever been cancelled or destroyed.

On the the first day of February, in the year 1859, and again on the first day of August, in that year, said company utterly failed and made default in the payment of the interest, interest warrants or coupons which became due and payable on those days respectively; and said company never has paid the whole or any part of the
101 moneys which, according to the tenor and effect of said bonds should have been paid on those days, and ever since said first day of August, 1859, the amount of interest in arrear and unpaid on said bonds has exceeded the sum of four hundred thousand dollars.

Said company has not acquired title to all the lands which constitute the site of the road from Portage City to La Crosse, nor to all the lands used for depots, engine station, and other buildings pertaining to said road; the road was not constructed in a substantial or enduring manner, and is continually suffering deterioration from time

and use, and said road, with its appurtenances, is not, in the judgment of your orators, worth more than the sum of one million of dollars; and should your orators obtain said lands, granted by Congress and the legislature of Wisconsin, so far as the same are or may be applicable to said road, between Portage City and Tomah, as above mentioned, it would not add more than half a million of dollars to the security of the bondholders, the lands in question being of poor soil and quality, and of little value, as compared with other lands in the same State. Said railroad company now is, and for a long time past has been, utterly insolvent and wholy destitute of property. Said Chamberlain is also in insolvent circumstances, and, in any event, the bondholders will lose more than half, and probably fully three-fourths of the moneys due to them from said company, as such bondholders; and the longer the bondholders are delayed in obtaining possession of said road from Portage City to La Crosse, and getting into the receipt of the income and profits of the same, the greater
102 their loss will be.

On or about the 23d day of August, 1859, your orators, by their attorney and agent, demanded of said Selah Chamberlain the possession and enjoyment of said railroad from Portage City to La Crosse, with all things appertaining to the same; but said Chamberlain utterly refused, and ever since has neglected and refused, to surrender the possession of said road, or its equipment or appurtenances, to your orators, and still continues to use and enjoy said road with its appurtenances, and to take and receive the income and profits of the same to his own private use and benefit. J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tisch, Dewit C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, the Milwaukee and Minnesota Railroad Company, Moses M. Davis, have or claim to have some interest in or lien upon the said mortgaged premises, or some part thereof, which interest or lien, if any, has accrued subsequently to the lien of said mortgage to your orators. No proceedings at law have been had, nor any suit or action commenced, by or on behalf of your orators, or any holder of any of the bonds of said company secured by the mortgage aforesaid, or any or either of them, or any interest unpaid or accrued thereon,
103 except only this action.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this kind are properly cognizable and relievable:

Your orators therefore pray the aid of this honorable court, and that the La Crosse and Milwaukee Railroad Company may be decreed to pay to your orators said principal sum of money above mentioned, with the arrears of interest now due, or hereafter to be-

come due and payable thereon, together with the costs and charges in this behalf expended, and in default thereof that said defendants above named, and all persons claiming, and to claim, under them, or either of them, or otherwise, may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part thereof, and may deliver over unto your orators all deeds, demises, and writings relating to or concerning the same; and that all and singular said mortgaged premises, with the appurtenances, property, and effects in said mortgage described, may be sold under the decree of this court, and that out of the moneys arising from the sale thereof your orators may be paid the principal sum due on said bonds of the said La Crosse and Milwaukee Railroad Company, and all interest money due and to become due thereon, together with their commissions or compensation, and all costs and charges by them in this behalf sustained, or that
104 they may have such other or further relief in the premises as may seem proper and shall be agreeable to equity and good conscience.

And that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on those bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained.

That your orators, as trustees as aforesaid, may be let into the possession of the said railroad from La Crosse to Portage City, and the incomes, tolls, and profits of the same, and also all the depots, machine shops, station houses, and other real estate equipments and appurtenances connected with that part of the railroad of said last mentioned company which lies between Portage City and La Crosse, at the date of said first mentioned mortgage, or at any time since, and also all the other property included in and covered by said mortgage.

And as to the several persons above named, who are properly parties to this bill of complaint, and not citizens of the State of Wisconsin, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties, if they shall come within such jurisdiction.

And that a receiver may be appointed, according to the course of practice of this court, and with the usual powers of receiver in like cases of all the property, equitable interests, things in action, effects in causes, receipts and earnings of said defendants, the La Crosse and Milwaukee Railroad Company, or said Chamberlain, as far as relates to said railroad from La Crosse to Portage City,
105 may it please your honor to grant unto your orators the people's writ of subpœna, to be issued under the seal of this court, directed to said defendants respectfully therein, and thereby commanding them on a certain day, and under a certain penalty, to be and appear before the judge of this honorable court, then and there to answer this bill of complaint, and to stand to and abide

by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray.

GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPHERD KNAPP,
Trustees.

CARY & PRATT,
Complainants' solicitors.
CLARKSON N. POTTER,
Of counsel.

STATE OF NEW YORK,
City and County of New York, ss:

On this 30th day of November, in the year 1859, personally appeared before me Greene C. Bronson, James T. Soutter, and Shepherd Knapp, known to me to be the plaintiffs in the above action, who, being by me severally sworn, did depose and say that the said Bronson, that he had read the foregoing bill of complaint, and the said Knapp and Soutter, that they had heard the same read, respectively, and that they respectively knew the contents thereof, and that the said bill of complaint is true of their own knowledge, except as to the matters which are therein stated to be upon their information and belief; and as to those matters they severally believe it to be true.

ALEX. OSTRANDER,
[SEAL.] *Commissioner for Wisconsin in New York, as witness my hand and official seal the day and year aforesaid.*

106 *Schedule A.*

Copy of resolutions authorizing the issue of bonds and the execution of a deed of trust.

Resolved, That the company, for the purpose of carrying forward its legitimate operations, will issue its bonds to the amount of ten millions of dollars; nine thousand of which bonds shall be for the sum of one thousand dollars each, and be numbered from number one to number nine thousand, inclusive; and two thousand shall be for the sum of five hundred dollars each, and be numbered from number one to number two thousand, inclusive. All of said bonds shall be expressed to be for money borrowed for the construction of the railroad from Madison to the St. Croix river or lake, and shall be payable to the bearers thereof on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons to be thereto annexed. Said bonds shall contain a reservation of the right of the company to satisfy and discharge any of said bonds at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars for any one of said bonds of one thousand dollars each, or the sum of five hundred and fifty dollars for any one of said bonds of five hundred dollars each. All of said bonds shall bear date on

the first day of February, one thousand eight hundred and fifty-seven, and be signed by the president and secretary, and have affixed to them the corporate seal of the company; and the said president and secretary *and the said president and secretary* are hereby
107 authorized and directed, for and in behalf of the company, to sign the same; and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same.

Resolved, That, for the better security of the payment of the aforesaid bonds, a deed of trust shall be executed, bearing date at such time as the same may be conveniently executed by the respective parties thereto, between the La Crosse and Milwaukee Railroad Company, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, of the city and State of New York, trustees, parties of the second part; which deed of trust, after reciting the act of Congress approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State,' approved June 3d, 1856;" and also stating the fact of the acceptance by this company of said last mentioned act; and after further setting forth the determination of this company, as above expressed, to borrow a sum of money not exceeding ten millions of dollars, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix river or lake, and to issue its bonds for the repayment of the moneys which may be borrowed, with the interest thereon; and also setting forth at length the form and tenor of said bonds, and also the
108 determination of this company to secure the payment of such bonds as may be issued as aforesaid, shall proceed to grant, bargain, sell, convey, and confirm unto the said party of the second part the estate, real, personal, and mixed, therein described, together with the rights, liberties, privileges, and franchises in said deed of trust described, in the words and figures following, to wit: Now, therefore, this deed witnesseth:

(Here follows a copy of said deed, as referred to in said resolution.)

Which said deed of trust shall be executed in duplicate on the part of this company, party of the first part, by having thereto affixed its corporate seal, and by being subscribed by the president and secretary; and the said president and secretary are hereby authorized and directed, for and in behalf of the company, to subscribe the same; and the said secretary is hereby authorized and directed to affix the corporate seal of the company to the same; and when said deed of trust shall also be executed by the said trustees, parties of the second part, the company will cause the same to be duly recorded, without unnecessary delay, in such places and manner as the laws of this State may require, for the purpose of making the same a

complete and perfect security in favor of the trustees and the persons who may become holders of the bonds.

Resolved, That a copy of these resolutions, duly certified under the seal of the company, be delivered to the trustees in said deed of trust.

Schedule B.

109 Deed of trust made this thirty-first day of December, in the year of our Lord one thousand eight hundred and fifty-six, (1856,) between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as aftermentioned, all of the city and State of New York, parties of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows :

(Here follows a copy of the said act of Congress, and of the legislature of Wisconsin.)

And whereas the said railroad company, after the passing of said last mentioned act, and on the same day, duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of state ;

And whereas said railroad company, for the purpose of constructing its road from Madison, by way of Portage City, to St. Croix river or lake, has determined to borrow a sum of money not exceeding ten millions of dollars, and to issue its bonds for the repayment of the moneys which may be borrowed, with the interest thereon, nine thousand of which bonds (exclusive of the numbering and interest warrants or coupons) will be substantially in the following form:

110 UNITED STATES OF AMERICA,
State of Wisconsin.

The La Crosse and Milwaukee Railroad Company.

Know all men by these presents that the La Crosse and Milwaukee Railroad Company acknowledge themselves to be indebted to the bearer hereof in the sum of one thousand dollars, lawful money of the United States, for money borrowed for the construction of their road from Madison to the St. Croix river or lake, which sum they agree to pay to the bearer hereof on the first day of February, in the year of our Lord 1877, at the Bank of the Republic, in the city of New York, with interest at the rate of seven per centum per annum, payable in the city of New York, semi-annually, on the first day of February and the first day of August in each year, on presentation and delivery of the interest warrants or coupons hereto annexed. The railroad company reserves the right to satisfy and discharge this bond at any time before the principal becomes due, by paying to the holder thereof the sum of eleven hundred dollars, with the interest up to the time

of such payments, so far as the same may not have been previously paid. This is one of nine thousand bonds all of the same tenor, and numbered from 1 to 9,000, respectively, which, with two thousand bonds for the sum of five hundred dollars, each numbered from 1 to 2,000, respectively, make in the aggregate the sum of ten millions of dollars, to secure the payment of all which bonds a deed of trust has been executed by said railroad company to Greene C. Bronson, James T. Soutter, and Shepherd Knapp, conveying all such interest as said railroad company has acquired or may hereafter acquire in
111 all the lands granted to said railroad company by the act of the legislature of the State of Wisconsin, approved October 11th, 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress entitled 'An act granting certain lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856," so far as the lands granted by said act of the legislature are applicable to the construction of the road of said railroad company, from Madison, by way of Portage City, to St. Croix river or lake, estimated to be about one million of acres; and also conveying all such interest as said railroad company has acquired or may hereafter acquire in said road from Madison to St. Croix river or lake, and in the road from Portage City to La Crosse, with all the equipments and other things pertaining to said roads; reference to which trust deed, bearing date the day of December, 1856, and reciting the said acts of Congress and the legislature, is hereby had and made for a more full description of said lands, roads, and other property and the interest thereby conveyed to said trustees.

In witness whereof, said railroad company has hereto affixed
[L. S.] its corporate seal, with the names of its president and secretary, the first day of February, in the year of our Lord 1859.

————, *President.*

————, *Secretary.*

Registered and countersigned by the trustees, this day of 185 .

————, *Trustees.*

And two thousand of which bonds will be in the like form, but for the sum of five hundred dollars each. And whereas said railroad
112 company has determined to secure the payments of such bonds as may be issued as aforesaid, in the manner herein provided: Now, therefore, this deed witnesseth, that the said railroad company, in consideration of the premises, and of the sum of one dollar paid by said parties of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part all and singular the several tracts, pieces, or parcels of land which now are or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter

constitute, or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said roads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made or to be built and made hereafter; and also of all and singular the locomotive-engines and other rolling stock and all the other equipments of every kind and description which have already been, or may hereafter be, procured for, or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property which have been, or may hereafter be, procured for or used in connection with, said roads or either of them; and also all and singular the rights, liberties, privileges, and franchises of said railroad company, of every kind and description, relating
113 to said roads; and furthermore, and upon the consideration aforesaid the said railroad company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said parties of the second part, all and singular, the lands granted or intended to be *to be* granted to said railroad company under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned, so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed. And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company in respect to the roads above mentioned, as fully and amply as the same might or could be conveyed if the said railroad had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, had already been designated and conveyed to said railroad company.

To have and to hold, all and singular, the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges and franchises hereby
114 conveyed, or intended to be conveyed, to the said parties of the second part, and the survivors and survivor, successors and successor of them, and their and his heirs and assigns forever, as joint tenants, and not as tenants in common. In trust, nevertheless, and upon the trusts, terms and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or

some of them, or interest thereon, said railroad company shall be suffered and permitted to possess, hold and enjoy said roads from Madison to St. Croix river or lake, and from Portage City to La Crosse, with the equipments, and all other things appertaining to said roads, and to use the same, take and receive the income and profits thereof, in the same manner as though this deed had not been made.

Second. When said road from Madison to St. Croix river or lake shall be surveyed and located, and the particular lands granted as aforesaid, to aid in the construction thereof, shall be ascertained, said railroad company will make schedules of the several sections and parcels of said lands, and affix thereto the minimum prices at which the same are to be sold, which prices shall in the aggregate for all of said lands amount to the sum of ten millions of dollars at the least, and will furnish such schedules, duly certified by said railroad company, to said parties of the second part, together with an affidavit of the president and secretary of said railroad company that, to the best of their knowledge, information and belief, the minimum prices have been fairly affixed, having reference to the relative values of the different sections and parcels of land; and whenever said railroad company shall certify in writing to said trustees that it has
115 contracted for the sale of any section or parcel of said lands, at a sum not less than the minimum price affixed to the same, and ten per centum at the least of the consideration money shall be paid to said trustees, and a bond and mortgage in the proper form from the purchaser to the trustees, securing the payment of the residue of the consideration money, with the interest thereon, as hereinafter mentioned, shall be delivered to said trustees, the mortgage having first been duly acknowledged and recorded, the said trustees will thereupon make, execute, and acknowledge a deed conveying to such purchaser, his heirs, and assigns, all the right, title, interest, and estate of the said trustees of, in and to the section or parcel of land so sold, with a covenant, that they have not done any act, matter or thing to defeat or prejudice their title to the lands so conveyed. The principal sum secured by the bond and mortgage to the purchaser must be made payable on or before the first day of February, one thousand eight hundred and seventy-five, and the interest thereon must be at the rate of seven per centum per annum, and be payable annually. The deed of the trustees to the purchaser will bear even date with the bond and mortgage, and will specify the true amount of consideration money, and the manner in which the same has been paid or secured. Sales may be made in like manner of any section or parcel of said land, at a less sum than the minimum price affixed to the same in such schedules; provided the president or secretary of said railroad shall make and furnish to said trustees an affidavit that the price agreed on is, in his opinion, the full market value of the land so sold; and provided, also, that the aggregate sums on all sales then and previously made shall be equal to or above the aggregate for all the lands sold as specified in said
116 schedules.

Third. The consideration money, on any such sales of lands

may be paid either in whole or in part, by delivering to said trustees, to be cancelled, one or more of the bonds which may have been issued by the railroad company as aforesaid, at their par value; and payments upon any such mortgage as aforesaid may be made by delivering to said trustees one or more of such bonds of the railroad company as aforesaid, at their par value, and two or more purchasers may unite and pay a part of all the aggregate amount of consideration money on their purchases, or a part or all of the aggregate amount of their mortgages in like manner.

Fourth. All moneys which may be received by said trustees under and in pursuance of this trust, after deducting therefrom their compensation for accepting and executing the trust, and all costs, counsel fees, charges, and all other expenses, shall constitute a sinking fund for the redemption and payment of the bonds so to be issued by the railroad company as aforesaid, and shall be faithfully applied to that object: and until the moneys shall be so applied the same shall be deposited in one of the trust companies in the city of New York, upon the best terms which can be procured for the same; and whenever there shall be any money so on deposit, said trustees may, in their discretion, apply the same to the purchase of the bonds which may have been issued by the railroad company as aforesaid, at their market value in the city of New York, provided such market value shall not exceed the par value thereof: and whenever the sum so deposited shall exceed twenty-five thousand dollars, the surplus beyond that sum shall be so applied by said trustees; and in
117 case a sufficient amount of bonds to absorb such surplus cannot be obtained at par in the city of New York, said trustees shall, on the written request of said railroad company, make purchases of bonds at a premium not exceeding ten per centum, if the same can be had in the New York market.

Fifth. Whenever the trustees shall receive any of the bonds above mentioned in payment for lands sold, or on mortgages, or shall purchase any bonds as above provided, the same, with any unpaid interest warrants or coupons annexed thereto, shall be immediately cancelled, and shall thereafter only be held as vouchers by said trustees.

Sixth. In case default for the space of sixty days shall be made in the payment of any of said interest warrants or coupons as they respectively fall due, it shall thereupon be lawful, and the said trustees are hereby authorized and empowered in their discretion to sell at public or private sale, for the best prices which can be obtained for the same, all or any portion of the lands mentioned in such schedules, for the purpose of obtaining the necessary funds to satisfy such default, and may appoint one or more agents or attorneys to make such sales, execute conveyances to the purchasers, and receive the purchase money. And if the sum in default shall at any time be equal to the amount of the interest for one year on all the bonds then outstanding, and the same cannot be satisfied within a reasonable time by such sales of land, or if default shall be made in the payment of the principal sum of said bonds at maturity, said trustees may there-

upon in their discretion, either in person or by their attorney or attorneys, agent or agents, appointed for the purpose, enter into and upon, and take possession of, all and singular the said roads
118 from Madison to the St. Croix river or lake, and from Portage City to La Crosse, and all the other property, real and personal, hereinbefore conveyed or intended to be conveyed, and may operate said roads and take and receive the income and profits thereof, and may sell all and singular the said roads and all the other property, real and personal, hereby conveyed or intended to be conveyed, either at public or private sale, and execute and deliver to the purchaser or purchasers deeds and conveyances, which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company, of, in or to said property, and every part and parcel thereof, including the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads which may be sold as aforesaid. But before any sale of the said roads, or either of them, or the rights, liberties, privileges, or franchises aforesaid, shall be made at auction, notice of such intended sale shall be published once in each week, for twelve weeks at least, in two newspapers published in the city of New York, and in three newspapers, at the least, published in the State of Wisconsin, one of which shall be published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And on the written request of the holder or holders of the major part in amount of the bonds then outstanding, the trustees shall proceed to sell and convey said property in the manner hereinbefore provided.

Seventh. Said railroad company will cause this deed to be duly recorded in all proper places, and will satisfy and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter be imposed or arise on the whole or any part of the property
119 hereby conveyed or intended to be conveyed; and said trustees assume no duty or responsibility on those subjects, or in relation to any other matter, except as herein provided.

Eighth. Said trustees may appoint all such attorneys, counsellors, clerks, and other agents, as they may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their selection. And further, neither of the trustees shall be answerable for the acts, omissions or defaults of his associates or associate, nor shall either of the trustees be responsible for anything short of gross negligence or wilful defaults in the discharge of his duties.

Ninth. This trust extends to such bonds, and such only, as shall be registered and countersigned by said trustees; and when all of said bonds shall be satisfied and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment; and whenever the trust shall determine, and any moneys which may be due to the trustees shall be

paid, the trustees will reconvey to said railroad company all their right, title, and interest of, in, and to all of said trust property which may not have been previously disposed of in pursuance of the trust.

Tenth. All the powers and duties of the trustees may be executed and discharged by any two of them; and in case of the death, incapacity to serve, or resignation of any trustee, all the estate and interest hereby created shall vest in the other trustees or trustee, as fully as if they or he only had been named in and had executed the deed. The supreme court in the first judicial district of the State of New York may remove either of the trustees on the application of his associates, or of the railroad company, reasonable notice being first given to such trustees. Any trustee may resign his trust, and thenceforward be discharged from all further duty or obligation in relation to it, provided such resignation, after reasonable notice to the president or secretary of said railroad company and the other trustees, shall be approved by said supreme court. If *it* any time there shall be only one trustee capable of acting, said supreme court, on reasonable notice to such trustee, and said president or secretary may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities in relation to the same, as fully as though he had been originally named as a trustee and had executed this deed.

Eleventh. Said railroad company will from time to time pay all such costs, charges, and expenses as the trustees may sustain or be put to in the execution of the trust, and keep them fully indemnified in the premises. Said trustees hereby accept and covenant and agree to and with said railroad company faithfully to execute said trusts, and said railroad company hereby covenants and agrees to and with said trustees, the survivors and survivor, successors and successor, of them, that said railroad company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded, and deliver to said trustees, or to the persons who shall then be trustees, all such further conveyances and assurances, and will do all such further acts as may be either necessary or proper for more effectually vesting in said trustees all such right, title, interest, or estate, both legal and equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed or intended to be conveyed.

In witness whereof, said railroad company has hereto affixed its corporate seal and caused the same to be subscribed by its [L. S.] president and secretary, and the trustees have subscribed their names and affixed their seals, the day and year first above written.

BYRON KILBURN, *President.*
EDWIN H. GOODRICH,
Secretary of the Railroad Company.
GREENE C. BRONSON,
JAMES T. SOUTTER,
SHEPHERD KNAPP,
Trustees.

E. MARINER,
S. H. ALDEN,
Witnesses as to Byron Kilburn, president, and Edwin H. Goodrich, secretary.
J. S. ATWOOD,
JOHN BISSELL,
Witnesses as to Messrs. Soutter and Knapp.

Witnesses for Greene C. Bronson, as to the execution of the foregoing instrument by him—
EDWARD WADE.
S. H. ALDEN.

Schedule C,

Showing the times when the several parcels of bonds were registered and countersigned by the trustees, with the numbers on such bonds. They were all for the payment of the principal sum
122 of $1,000 each, except one hundred bonds of $500 each, numbered from 1 to 100, both inclusive, registered and countersigned on the 29th of January, 1858.

January	27, 1857,	25	bonds	numbered from	1 to 25, both inclusive.
February	5, 1857,	100	do.	do.	126 to 125 do.
February	9, 1857,	100	do.	do.	126 to 225 do.
February	19, 1857,	100	do.	do.	226 to 325 do.
March	5, 1857,	200	do.	do.	326 to 525 do.
March	6, 1857,	250	do.	do.	751 to 1000 do.
March	13, 1857,	50	do.	do.	526 to 575 do.
March	24, 1857,	100	do.	do.	576 to 675 do.
March	30, 1857,	75	do.	do.	676 to 750 do.
April	10, 1857,	100	do.	do.	1001 to 1100 do.
April	15, 1857,	100	do.	do.	1101 to 1200 do.
April	20, 1857,	100	do.	do.	1201 to 1300 do.
May	7, 1857,	50	do.	do.	1301 to 1350 do.
	and	100	do.	do.	1501 to 1600 do.
May	12, 1857,	100	do.	do.	1351 to 1450 do.
May	16, 1857,	50	do.	do.	1451 to 1500 do.
May	30, 1857,	100	do.	do.	1601 to 1700 do.
June	1, 1857,	200	do.	do.	1701 to 1900 do.
June	2, 1857,	100	do	do.	1901 to 2000 do.
June	27, 1857,	100	do.	do.	2001 to 2100 do.
July	11, 1857,	100	do.	do.	2101 to 2200 do.
July	13, 1857,	125	bonds	numb'd fr'm	2201 to 2325, both incl've.
July	14, 1857,	175	do.	do.	2326 to 2500 do.
January	29, 1858,	400	do.	do.	2501 to 2900 do.
February	12, 1858,	300	do.	do.	2901 to 3200 do.
February	15, 1858,	150	do.	do.	3201 to 3350 do.
February	16, 1858,	200	do.	do.	3701 to 3750 do.
	and		do.	do.	3801 to 3950 do.
123	Also	150	do.	do.	3351 to 3500 do.

February 23, 1858, 250 bonds numb'd fr'm 3501 to 3700 both incl've.
and do. do. 3751 to 3800 do.
January 29, 1858, 100 bonds of $500 each, numbered from 1 to 100, both inclusive.

Total, 3,950 bonds of $1,000 each		$3,950,000
100 " " 500 "		50,000
		$4,000,000

Schedule D.

An indenture, made the twenty-eighth day of January, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the State of Wisconsin, of the first part, and Greene C. Bronson, James T. Soutter, and Shepherd Knapp, all of the city of New York, as trustees, as hereinafter mentioned, of the second part: Whereas, by a certain deed of trust, bearing date the thirty-first day of December, one thousand eight hundred and fifty-six, made and executed between the parties hereto, the said parties of the first part, after reciting their intention to borrow a sum of money not exceeding ten millions of dollars, for the purpose of constructing their railroad, and to issue their bonds, for the repayment of the money so borrowed, to an amount not exceeding that sum, did, for the purpose of securing their bonds to the amount aforesaid, so proposed to be issued, grant and convey to the said parties of the second part, as trustees, all and singular the railroad of the said company, constructed and to be constructed, from Madison, by way of Portage City, to the St.
124 Croix river or lake, and from Portage City to La Crosse, and the appurtenances thereof, and all the lands and premises constituting, or which should thereafter constitute the site of the roadway of said company, and the turnouts, depots, buildings, and other appurtenances of said road, and the rolling stock, equipments and other property, which had been or should be provided for the said road, and likewise all the right and interest, whether present or prospective, of the said company, in or to the lands granted by the United States in aid of the construction of said railroad, to which the said corporation was or might be or become entitled, under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin, in said deed of trust recited, by which deed of trust provisions were made for the application of the property so conveyed in trust or mortgaged, or the proceeds of the same, to the payment of the interest upon and the redemption of the principal of the bonds so proposed to be issued, in certain modes, and upon certain terms and conditions in the said deed of trust specified, as by reference to such deed of trust, (which reference is hereby made with the like effect as if said deed and all the provisions thereof were here recited at large,) will more fully appear:

And whereas the said The La Crosse and Milwaukee Railroad Com-

pany have heretofore caused to be countersigned by the said trustees, bonds under and secured, or designed to be secured, by the said deed of trust or mortgage, to the amount of two million five hundred thousand dollars, which have been, for the most part, issued and negotiated; and said company being now engaged in the construction and completion of that portion of said road between Portage City and La Crosse, have ascertained that in order to complete said road to La Crosse,
125 with the necessary turnouts, depots, stations, buildings, bridges, and all other appurtenances, it will not be necessary to issue bonds under said deed of trust or mortgage to an amount exceeding in the whole four millions of dollars, including those which have been already issued, and have, accordingly, resolved and determined that the issue of such bonds for that purpose shall be limited to that amount, and that no lien shall be created by the issue of bonds under said mortgage upon that portion of said road between Portage City and La Crosse, or upon the lands appurtenant to that section of said road, to an amount exceeding in the whole four millions of dollars; and have also resolved more fully and aptly to secure the said bonds issued and to be issued, within such amount of four millions of dollars, in the manner and to the effect herein provided and declared:

Now, this indenture witnesseth, that, in consideration of the premises and of one dollar to the said company in hand paid, the receipt whereof is hereby acknowledged, and in order to secure the said bonds issued and to be issued within the said amount of four millions of dollars, and to induce the future taking of said bonds, as well as those heretofore issued as those hereinafter to be issued by said company, the said The La Crosse and Milwaukee Railroad Company have covenanted, granted, and agreed, and do hereby covenant, grant, and agree, to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds within the amount of four millions of dollars issued and to be issued as hereinafter recited, and to and
126 with the successors of said trustees, that no bonds exceeding in the whole, including those already received, the said sum of four millions of dollars, shall be issued under said mortgage or deed of trust, bearing date December 31st, 1856, so as to make the amounts thereof liens upon the said road from Portage City toLa Crosse, or any part thereof, or upon any of the turnouts, bridges, depots, buildings, or other appurtenances thereof, or upon any of the rolling stock, materials, or other personal property acquired or to be acquired for or in connexion with the same, or upon any of the lands appurtenant to or acquired or to be acquired under or by virtue of the said acts of Congress and of the State of Wisconsin, by reason of the construction of said road from Portage City to La Crosse, the said section of road from Portage City to La Crosse being in length one hundred and four miles, or thereabouts, and being by the way of New Lisbon, Tomah, and Sparta; but nothing herein contained shall be so construed as to prevent the said company from issuing bonds under said mortgage or deed of trust to such additional amount not exceeding

six millions of dollars, as shall be requisite for completing their said road from the point known as the junction at or near the town of Tomah to the St. Croix river or lake, provided the lien thereof shall be so limited as not to interfere with the prior lien hereinbefore provided for of the said first mentioned bonds for four millions of dollars, upon the said section of road from Portage City to La Crosse, with the appurtenances and the lands appurtenant to, or acquired in connexion with, that section of road.

And for the considerations and purposes aforesaid, the said La
127 Crosse and Milwaukee Railroad Company do further covenant, grant, and agree to and with the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp, as trustees as aforesaid, for and on behalf of all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds within the amount of four millions of dollars, issued and to be issued as herein first recited, and to and with the successors of said trustees, that notwithstanding the provisions contained in the said deed of trust or mortgage, bearing date December 31st, 1856, relating to the proceedings to be had in case of default in payment of the interest upon the bonds issued or to be issued within the limit of four millions of dollars, as herein first recited, or in case default shall be made in the payment of the principal of said bonds, or any of them, when such principal shall become due, to enter upon and take possession of all and singular the said road from Portage City to La Crosse constructed and to be constructed as aforesaid, with all the appurtenances thereof, including rolling stock, and to operate such road and apply the net income realized therefrom to the payment of the interest in arrear upon the said bonds issued and to be issued within the limit of four millions of dollars, as herein first recited; and in case the interest which shall have accrued upon any of such bonds issued and to be issued within such limit of four millions of dollars, as aforesaid, shall at any time remain unsatisfied for six months after the presentation of the coupons for payment, or in case the principal of such bonds, or any of them, shall have fallen due and shall remain unpaid, the said trustees or their successors may, and upon the written request of the holders of a majority in amount of such bonds, they shall sell, either at
128 public or private sale, all and singular the said road from Portage City to La Crosse constructed and to be constructed as aforesaid, with all and singular the several tracts, pieces or parcels of land, which now are or may be, or constituted, the site of the roadway, turnouts, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute or be a part of the said section of road from Portage City to La Crosse; and also all and singular the superstructure of that section of road, whether now made or to be made hereafter, and all the engine-houses, workshops, depots and other buildings, and all the other improvements on or pertaining to said section of road, whether now built and made or to be built and made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description,

which have already been or may hereafter be procured for, or used on the said section of road, and all the materials, tools, implements, utensils, and other personal property, which have been or may hereafter be procured in connexion with said section of road; and also all and singular the rights, liberties, and privileges and franchises of said railroad company of every kind and description, relating to the said section of road from Portage City to La Crosse; and execute and deliver to the purchaser or purchasers, deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustees and said railroad company, of, in, or to the property so sold, and every part and parcel thereof, including the rights, liberties, privileges and franchises of said
129 railroad company, in respect of the road from Portage City to La Crosse, which may be sold as aforesaid: Provided always, that notice of such sale shall be given in accordance with the provisions in that behalf contained in the said deed of trust or mortgage, bearing date December 31, 1856. And it is hereby declared and provided that the net proceeds of such sale so made by said trustees shall be applied to the payment of the amount then owing, (whether then due or yet to become due,) for principal and interest upon the said bonds, within the amount of four millions of dollars, issued and to be issued, as herein first recited; and in case the said net proceeds shall be insufficient for the full satisfaction thereof, they shall be applied thereto pro rata in proportion to the amounts owing upon said bonds, saving and reserving to the holders of said bonds all their rights, liens and claims, for the satisfaction of the balance remaining owing to them, out of the lands and other securities in that behalf provided by the said deed of trust or mortgage, bearing date December 31, 1856: Provided always, nevertheless, that if such default in the payment of interest should occur before the completion of the said railroad to La Crosse, the trustees shall not take possession of the said road, in consequence of such default, until such default in the payment of interest shall have continued six months, and the sale of said road in consequence of such default shall not be made until after such default shall have continued twelve months.

And it is hereby expressly declared, granted and agreed by the said company, that the provisions herein contained for the security of the said bonds within the amount of four millions of dollars
130 issued and to be issued, as herein first recited, and for the enforcement of the liens and securities provided therefor, are in addition to the provisions, liens and securities made or created in that behalf by the said original deed of trust or mortgage bearing date December 31, 1856, and that all such original provisions, liens and securities are, notwithstanding this instrument, to remain in full force and effect, save in so far as conditions of or limitations in respect of the manner of the enforcement of such liens or securities are by this instrument qualified or dispensed with.

And the said company do hereby, for the considerations aforesaid, further covenant, grant, declare and agree, to and with the said

trustees, for and on behalf of all such persons and corporations as now are or hereafter shall become or be holders of any of the bonds, within the amount of four millions of dollars, issued and to be issued, as hereinafter recited, and to and with the successors of said trustees, that all and singular the lots, lands, and real estate whatsoever, which the said company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the city of La Crosse or its vicinity, and all improvements made or to be made thereon, shall be deemed and taken to be appurtenant to the said section of road from Portage City to La Crosse, and for all the purposes of the said original deed of trust, or mortgage, bearing date December 31, 1856, and of this instrument, the same shall be deemed to be included in the conveyance or mortgage thereby made to said trustees, and to be covered by the provisions of the said original deed of trust or mortgage, and of this instrument, whether such lots, lands, or real estate shall have been or shall be provided or required
131 for actual use by said railroad company, for the purposes of their business, or not.

And it is further expressly declared, granted and agreed by the said company that the entire proceeds of the sales of the lands granted by the State of Wisconsin under the act of Congress of June 3, 1856, to aid in the construction of the roads of the said company, so far as said lands pertain to, or are or shall be derived from the construction of that portion of their said road constructed and to be constructed from Portage City westward to the junction, so called, at or near the town of Tomah, being a distance of sixty-one miles or thereabouts from Portage City, embracing about three hundred and seven thousand two hundred acres, after deducting therefrom all charges, counsel fees and expenses, incurred by them in and about this trust, shall be by said trustees disposed of, and applied, in the first instance, to the payment of whatever sum or sums may be due or owing upon the four millions of bonds hereinbefore referred to, in accordance with the provisions of the before-mentioned deed of trust or mortgage, bearing date December 31, 1856, and the surplus, if any, after the full satisfaction of said bonds, shall be divided pro rata among the holders of such certificates as may be issued by the said company in connection with the said bonds, allowing to the holders of privileged stock which has been heretofore issued in connection with such bonds, and which shall not be surrendered, such proportion, if any, of the said surplus proceeds, as they may be entitled to; which said certificate to be issued in connection with said bonds shall be in substance as follows:

"This certificate entitles the holder of first-mortgage land grant bond No. — to dividends of such surplus as may be realized by the trustees under the provisions of a certain deed of trust or
132 mortgage of this company to Greene C. Bronson, James T. Soutter and Shepherd Knapp, dated January 28, 1858, from the sales of the public lands granted by the State of Wisconsin to this company, to aid in the construction of its land grant road, so far as said lands pertain to, or are or shall be derived from the construc-

tion of that portion of their said road, constructed and to be constructed from Portage City westward, to the junction so called, at or near the town of Tomah, being a distance of sixty-one miles or thereabouts from Portage City, embracing about three hundred and seven thousand two hundred acres, after providing for the first mortgage, land grant bonds issued under the above-mentioned mortgage or deed of trust, upon the pledge of said lands, in the proportion that one thousand dollars bears to the sum of four millions of dollars of such bonds, issued and to be issued under the provisions of the above-named mortgage or deed of trust; or, in case the holders of any of the bonds heretofore issued under the said mortgage or deed of trust, with the accompaniment of the privileged stock, so called, shall decline to surrender the certificates for such privileged stock in exchange for certificates of this character, then in proportion to the amount of certificates of this character issued and to be issued within the above-mentioned limit of four millions of dollars, after allowing to the holders of the privileged stock above referred to, which may not be surrendered, such proportion, if any, of the said surplus proceeds of said lands as they may be entitled to.

Such surplus shall be divided by the trustees whenever the amount realized shall be equal to five per cent. upon the amount of the bonds entitled to this privilege. No responsibility attaches
133 to the holder of this certificate for any charges or assessments.

Milwaukee, Wisconsin, January 28th, 1858.

——— ———, *President.*

——— ———, *Register.*

In testimony whereof, the said The La Crosse and Milwaukee Railroad Company, in pursuance of a resolution of their board of directors to that effect, have to this instrument affixed their corporate seal and caused the same to be attested by their president, and the said Greene C. Bronson, James T. Soutter, and Shepherd Knapp have hereunto set their hands and seals the day and year first above written.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY,

By STEPHEN CLARK, *President.*

[L. S.] JACKSON HADLEY, *Secretary.*

PRENTISS DOW.

D. E. WHEELER.

Witnesses: J. P. C. Cottrill, A. R. R. Butler, witnesses as to the signature of Jackson Hadley.

Filed December 5, 1859.

Exhibit No. 5½.

UNITED STATES OF AMERICA,
District of Wisconsin:

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held according to

law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of April, A. D. 1860. Present: the honorable Andrew G. Miller, judge of said court, presiding.

On the fourteenth day of the said term, to wit, on the eighteenth day of May, A. D. 1860, the following proceedings were had, to wit:

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GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

The rule and motion of the complainants for the appointment of a receiver in this cause having been argued by Mr. Potter, for the complainants, and by Mr. Lynde and Mr. Emmons, for the defendant, Chamberlain, and submitted: On consideration whereof, it was ordered and decreed, and this court doth hereby order and adjudge, that the said complainants, or each one of them, as they may select, be, and he or they are hereby, appointed receiver, as hereinafter mentioned, and be at once put into possession of the mortgaged property; but in case said complainants, or either of them, decline to act as such receiver, then, on filing such refusal, signed by them or their counsel, it is hereby further ordered that Hans Crocker be, and he hereby is, appointed receiver, (in their stead,) of all and singular the railroad from Madison, by way of Portage City, to St. Croix river or lake, and from Portage City to La Crosse, mentioned in the bill of complaint, with all and singular the furniture, fixtures, and appurtenances, engine-houses, workshops, depots, and other buildings and improvements, engines, cars, rolling stock, materials, equipments, tools, implements, utensils, and all and singular the personal property, rights, liberties, privileges, and franchises of the

135

said railroad company relating to said road, or which have been procured for or used in connection therewith, or either of them, and all other the property, rights, and effects, franchises, and interest mentioned in the said deed of trust to the complainants which this action is brought to enforce.

And it is further ordered that the said trustees, or such one of them as may accept, and if not, then that the said Hans Crocker, before entering on his duties as such receiver, shall give a bond, with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that they or he will duly manage and conduct said railroad and mortgaged property, and for what he shall receive shall duly file inventories, and also file, under oath, every month, accounts of his receipts and disbursements, in accordance with the rules and practice and direction of this court.

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said trustees, or

such of them as they shall elect to act as receiver; and in case they decline to so act, then to the said Hans Crocker, as such receiver, all and singular the said railroad, from Madison to Portage City, and from Portage City to La Crosse, and all other the real estate and premises in said deed of trust to complainants mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property which belonged to the La Crosse and Milwaukee Railroad Company on the 31st day of December, 1856, or at any other time thereafter, which may have been procured for or used in connection with said mortgaged premises, or any thereof, which may have
136 come to the hands of the said defendants respectively, or over which they have control; and that such receiver take possession thereof, and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation or use of the said railroad and property in anywise, and out of the same pay the expenses of the said receivership and this application, and the costs and expenses of operating and maintaining or preserving and keeping said railroad, and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order and direction of this court.

And it is further ordered that the said receiver, and any other party in interest in this suit, have leave from time to time to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required.

June 7, 1860.—This day came the complainants, by their counsel, Mr. Cary, and declined to act as receiver, by virtue of the order of this court, made on the 18th day last, as by their declination in writing filed. And the official bond of Hans Crocker, as receiver, approved and filed.

137 *Exhibit No. 6.*

UNITED STATES OF AMERICA.
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the seventh day) of January, A. D. 1861. Present: the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-third day of said term, to wit, on the eleventh day of March, A. D. 1861, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

This day came the parties, by their counsel, and on consideration of the pleadings, proofs, and the arguments of counsel, it is ordered by the court that reference be, and hereby is, made to Winfield Smith, a master, and to Jerome R. Brigham and Joshua Hatheway, special masters, to ascertain and report the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust, and the real amount of said bonds.

And the said masters shall ascertain and report the amounts of the several judgments of Newcomb, Cleveland, Sebre Howard, and of Graham & Scott.

138 And it is further ordered that the said master report the amount of the several specific claims of Selah Chamberlain, and also an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages. And that they may examine the said Chamberlain under oath, and require him to produce his books, and they may also take additional testimony to that on file.

And it is further ordered that the said masters ascertain and report the whole amount of rolling stock on the road, and that they specify the quantity thereof that is covered by and included in this mortgage. And also in the first and second mortgages, respectively.

March 21, 1861.—Ordered by the judge that Increase A. Lapham be, and hereby is, appointed a special master in this case, in the place of Joshua Hathaway, who declined serving.

139 District court of the United States for the district of Wisconsin.

Exhibit No. 7.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPHERD KNAPP, trustees,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*
} In equity.

To the Hon. A. G. Miller, judge:

In pursuance and by virtue of an order of reference made in this cause of the eleventh day of March, A. D. 1861, and of an order supplementary thereto, made on the twenty-first day of March, A. D. 1861, we, the undersigned, Winfield Smith, a master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, do respectfully report:

That we have been attended by the counsel for the parties, and have taken proofs in regard to the matter referred by the said order, in addition to that on file, which proofs are herewith returned, consisting of the copies of depositions and of exhibits, the originals whereof are returned by us and filed in this court in the other cause depending in said court, in which the said depositions and exhibits have been taken, on or order of reference and order supplementary thereto, made of the same dates as above; in which cause Greene C. Bronson and James S. Soutter, trustees, are complainants, and the said La Crosse & Milwaukee Railroad Company and others are defendants.

We further report that we have passed over the lines of the railroad of the said La Crosse & Milwaukee Railroad Company,
140 and have examined those portions thereof where any of the work by the defendant, Selah Chamberlain, as stated in the pleadings and testimony in this cause, was performed. Previous to which, we gave notice of our intended examination to the counsel for the defendant, Chamberlain, and to the counsel for the defendants, Howard, Graham and Scott, and the Milwaukee & Minnesota Railroad Company, informing them that they and engineers selected by them were at liberty to accompany us and assist in making such examination. We also endeavored, but without success, to procure the attendance and aid of Mr. Benjamin H. Edgerton, a civil engineer, whose testimony is among the depositions taken by us, as above stated.

We have ascertained and computed the amount of interest due and unpaid on the bonds described in the mortgage or deed of trust to the complainants, set forth in the bill of complaint in this cause, and the real amount of the said bonds.

The real amount of those of the said bonds, numbered from one to one thousand nine hundred ninety-one, inclusive, being 1,991 bonds first issued, of one thousand dollars each, at one hundred cents on the dollar, is one million nine hundred ninety-one thousand dollars, ($1,991,000.) The interest thereon, from February 1, 1857, to the date hereof, at seven per cent., is $638,779 17, (six hundred thirty-eight thousand seven hundred seventy-nine dollars and seventeen cents;) of which sum there is due upon the coupons attached to said bonds, and payable in February and August of each year, the sum of six hundred twenty-seven thousand one hundred sixty-five dollars, which sum has been due since the first day of August, A. D. 1861.

The real amount of those of the said bonds, numbered from one thousand nine hundred ninety-two to two thousand five hundred, both inclusive, being 509 bonds of one thousand dollars each, al-
141 lowed at forty cents on the dollar, is two hundred three thousand six hundred dollars, ($203,600.) The interest thereon, from February 1st, 1857, to the date hereof, at seven per cent., is $65,321 67, (sixty-five thousand three hundred twenty-one dollars and sixty-seven cents.)

The real amount of the remainder of the said bonds, being 1,450, bonds of one thousand dollars each, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both in-

clusive, and one hundred bonds of five hundred dollars each, numbered from one to one hundred, both inclusive, allowed at forty cents on the dollar, is six hundred thousand dollars, ($600,000.) The interest thereon, from February 1st, 1857, to the date hereof, at seven per cent., is $192,500, (one hundred ninety-two thousand five hundred dollars.)

Thus the real amount of all the said bonds is $2,794,000, on which the interest unpaid to the date hereof is $896,600 84.

We have also ascertained the amount of judgment of Newcomb Cleveland, mentioned in the said order, which is now equitably owned by the defendant, Selah Chamberlain. The same was rendered on the seventh day of October, A. D. 1857, for damages, $111,727 71; costs, $544 15. And there was paid thereon, under the order of this court, April 22d, 1861, in full of interest and costs to that date, the sum of $28,801 92.

The interest on the amount then due, at seven per cent., from that date to June 29th, 1861, is	$1,155 56
Adding principal	111,729 71
142	
The total due was	$113,183 27
Upon which date was paid	10,000 00
Leaving due June 29th, 1861	$103,183 27
Upon which the interest to July 18th, 1861, at 7 per cent., is	381 20
The amount then due was	$103,564 47
Upon which date was paid	20,000 00
Leaving due at that date	$83,564 47
On which interest to the date hereof is	698 68
The amount due at this date is	$84,263 15

Eighty-four thousand two hundred sixty-three dollars and fifteen cents.

We have also ascertained the amount of a certain judgment, rendered in favor of Newcomb Cleveland against the La Crosse & Milwaukee Railroad Company, in the circuit court of Milwaukee county, on the twentieth day of April, A. D. 1859.

There is due thereon at the date hereof, damages and costs	$3,718 60
Interest to the date hereof	614 60
The amount due at this date is	$4,333 20

We have also ascertained the amount of a certain other judgment, rendered in favor of Newcomb Cleveland against the La Crosse &

Milwaukee Railroad Company, in the circuit court for Milwaukee county, on the twentieth day of April, A. D. 1859.

There is due thereon at the date hereof, damages and costs	$1,525 71
Interest to the date hereof	251 14
The amount due at this date is	$1,777 85

143 We have also ascertained the amounts of the judgments of Sebre Howard, mentioned in his answer filed in this cause. The amount of his judgment rendered in the said circuit court is included and embraced in the judgment rendered in his favor by this court (on the law side thereof) on the twenty-eight day of November, A. D. 1859; on which last-named judgment there is due at the date thereof:

Damages and costs	$16,379 86
Interest to the date hereof	2,013 39
The amount due at this date is	$18,393 25

We have ascertained the amounts of the judgments of the defendants, (Graham & Scott,) mentioned in their answer, filed in this cause; the amounts of their judgments rendered in the said circuit court are included and embraced in the judgment rendered in their favor by this court (on the law side thereof on the eleventh day of January, A. D. 1860, on which last-named judgment there is due at the date thereof:

Damages and costs	$44,413 18
Interest to the date hereof	5,092 78
Amount due at this date	$49,505 96

We have inquired into and ascertained the amount of the several specific claims of the defendant, Selah Chamberlain, and have taken and stated an account of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenues of the whole road, without regard to its divisions by the mortgages; and we have examined the said Chamberlain under oath, and have required him to produce his books, which he has accordingly done, and we have taken additional testimony to that on file.

144 The amount of the said Chamberlain, comprising the said claims, (exclusive of the judgment rendered in favor of Newcomb Cleveland, first above mentioned,) presented to us on his behalf, is herewith returned, marked Schedule First. The paper marked Schedule Second, herewith returned, contains his account with the said La Crosse & Milwaukee Railroad Company, as allowed and stated by us, showing the amount of his several specific claims against the said company, as allowed by us, omitting the last-mentioned judgment, as also the items and amounts disallowed by us, and also show-

ing the amounts of his receipts, set-offs, and credits, and of such as should be made to his claims, including his receipts of revenue of the whole road; and showing also the balance due to him, including interest, at the date of this report, which balance we have ascertained to be four hundred eighteen thousand six hundred and sixteen dollars and seventy cents.

And we have made a separate statement as a part of said Schedule Second, of the real and just amounts due on the second day of October, A. D. 1857, on account of the items of indebtedness included in the judgment of the said Selah Chamberlain, rendered on that date, and mentioned in the pleadings in this cause, showing that the true amount of such items of indebtedness was, at the date, five hundred sixty-eight thousand nine hundred seventy-five dollars and seventy-seven cents, ($568,975 77.)

Of the several specific claims so allowed and stated in the said account is one under date of October 1st, 1858, for moneys paid by the said Chamberlain, in and before that date, in the construction of the depot building of the said company at La Crosse, to the amount of..... $12,190 95
On which interest to this date is..... 2,489 00

Making the amount at this date..... $14,679 95

145 Which sum is secured to the said Chamberlain, who holds the title to the said building and the lands on which it stands.

And another of the claims so allowed, under date of March 1st, 1859, is for moneys paid by the said Chamberlain to Jacob A. Hoover for a lot of land in the city of Milwaukee, crossed by the said railroad and used for its purposes, amounting to..... $3,236 52
On which interest to date is..... 566 38

Making the amount at this date..... $3,802 90

Which sum is likewise secured to the said Chamberlain, who holds the title to the said lot.

We have also ascertained the whole amount of rolling stock on the whole road at the cost price. The amount thereof was, at the date of the filing of the bill of complaint in this cause, five hundred sixty nine thousand six hundred thirty-five dollars and seventy-eight cents, and an additional amount of fifty-three thousand six hundred dollars has been purchased since the filing of the bill of complaint, making the whole amount $623,235 78.

And we have ascertained, and do further report, that of the said rolling stock, forty box-cars, amounting, at the cost price thereof, to thirty-one thousand nine hundred and twenty-nine dollars and sixty-four cents, and numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, are covered by and included in the

mortgage executed to the complainants as set forth in the bill of complaint in this cause, the said cars having been purchased,
146 and by the proceeds of a portion of the bonds to which this mortgage is collateral, and the remainder of the said rolling stock is covered by and included in the first mortgage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the seventeenth day of August, A. D. 1857.

In ascertaining the facts and amounts, and in making the computations herein above contained and referred to, we have been guided by the opinions and instructions of this court communicated to us in connection with the said order of reference.

All which is respectfully submitted.

Dated Milwaukee, 1 September, 1861.

WINFIELD SMITH.
JEROME R. BRIGHAM.
I. A. LAPHAM.

Filed Oct. 7, 1861.

147 *Exhibit No.* 8.

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER, and SHEPHERD KNAPP, *against* LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.	In equity.

Exceptions taken by the said complainants to the report of Winfield Smith, as master, and Jerome R. Brigham and Increase A. Lapham, special masters of this court, to whom it was referred to as certain, compute and report, among other things, as to the amount of interest really due upon and principal secured by the bonds issued under the deed of trust or mortgage given to your orators, and describ ed inthe complainants' bill of complaint, and also to ascertain and report the whole amount of rolling stock on the whole road, and which of the mortgages on said road covered and included said rolling stock.

1st. For that the said master and special masters have in and by their said report certified that the real amount of the bonds secured by the mortgage given to said complainants, numbered from 1992 to 2500, both inclusive, being 509 bonds of one thousand dollars each, was two hundred and three thousand and six hundred dollars, and that the interest thereon, from February 1st, 1857, to the date of said report, at 7 per cent., was sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents.

Whereas the said master and special masters ought to have certified that the real amount of the principal of the said bonds
148 was $509,000 00, and the interest thereon from February 1st, 1857, to date of said report, at seven per cent. was $163,304 22.

2d. For that the said master and special masters have in and by their said report certified that the real amount of said bonds, numbered from 2501 to 3950, both inclusive, being 1,450 bonds of $1,000 each, and of one hundred of said bonds of $500 each, numbered from one to one hundred, both inclusive, as allowed by them, was six hundred thousand dollars, and the interest thereon from February 1st, 1857, to the date of said report, at seven per cent., was $192,500.

Whereas the said master and special masters ought to have certified that the real amount of principal of said bonds was $1,500,000, and the interest due thereon from February 1st, 1857, to the date of said report, at seven per cent., was $481,250 00.

3d. For that the said master and special masters have in and by their said report certified that the real amount of all the said bonds was $2,794,000 00, on which the interest unpaid to the date of said report is $896,600 84, making in all the amount of $3,690,600 84.

Whereas the said master and special masters ought to have certified that the real amount of principal unpaid of said bonds was $4,000,000 00, and the interest due and unpaid thereon $1,283,333 39, making in all the amount of $5,283,333 39.

4th. For that the said master and special masters have in and by their said report certified that all the rolling stock on said road (except 40 box-cars which are specially named in said report) was

149 covered by and included in the first mortage upon the said railroad, and in the mortgage upon the said railroad executed to Greene C. Bronson and James T. Soutter, and bearing date on the 17th day of August, A. D. 1857.

Whereas the said master and special masters ought to have certified that all the rolling stock on said road (except that purchased by the receiver since the commencement of this suit, amounting to the sum of $53,600) was covered by and included in the mortgage given to the said complainants, and described in the bill of complaint in this cause, and that said mortgage was a first and prior lien on said rolling stock, superior to all other liens; and that as to the rolling stock purchased by said receiver above mentioned, $\frac{105}{200}$ thereof was caused by the mortgage described in the complaint, and that to that extent the complainants' said mortgage was a first lien thereon.

Whereof said complainants except to the said master and special masters' said report, and appeal therefrom to the judgment of this honorable court.

CASY & PRATT,
Solicitors for Complainants.

Filed Nov. 2d, 1861.

150 *Exhibit No. 9.*

UNITED STATES OF AMERICA.
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first

Monday (being the sixth day) of January, A. D. 1862. Present: the honorable Andrew G. Miller, judge of said court presiding.

On the *the* second day of the said term, to wit, on the seventh day of January, A. D. 1862, the following proceedings were had:

GREENE C. BRONSON, JAMES T. SOUTTER, AND SHEPHERD KNAPP, trustees,
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY, J. ALBERT HELFENSTEIN, trustee, *et als.*

This day came the parties, by their counsel, and on consideration of the several exceptions to the report of the masters, and the arguments of counsel, it is ordered by the court that the first, second and third exceptions of complainants to said report be, and hereby are, overruled. And it is further ordered by the court that the fourth exception of complainants be, and is hereby, overruled as to the forty box-cars which are covered by this mortgage. And it is further ordered by the court that on said exception the said report be so modified that all the other rolling stock that was on said road when the receiver was appointed, except the said forty box-cars, is
151 covered by and included in the first mortgage of the road from Milwaukee to Portage City; and that all the rolling stock on said road that has been purchased or procured since the court has held possession by its receiver, costing $147,942 63, be applied to the said first mortgage, and the mortgage in this bill, in proportion to the net revenues on such portions of the road said mortgages respectively covered, since the appointment of the receiver. And it is further ordered by the court that the sixth and seventh exceptions of Selah Chamberlain to said report be, and hereby are, allowed; and that the tenth exception of said Chamberlain to said report be, and hereby is, overruled. And it is further ordered that the remaining other exceptions of said Selah Chamberlain be held by the court for further consideration.

Exhibit No. 10.

152 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the sixth day) of January, A. D. 1862. Present: the honorable Andrew G. Miller, judge of said court, presiding.

On the sixth day of said term, to wit, on the thirteenth day of January, A. D. 1862, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER AND SHEPHERD KNAPP, trustees,

vs.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Knetzger. Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Gemmell, Charles Quentin, August Sauthoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin,
153 Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James S. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Barton, D. M. Corbett, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Sutherland, E. Haskett Derby, Frederick Levick, Charles Shephard, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, John J. Vanderbilt, J. F. Bergen, G. S. Boardman and John Nicholson.

This day this cause came on to be finally heard at this term, upon the bill taken as confessed against the defendants, La Crosse and Milwaukee Railroad Company, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Avery Hill, A. V. Rudd, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Edward H. Broadhead, Joshua Hathaway, Charles Quentin, Lawrence G. Graham, Donald D. Scott, The Milwaukee and Minnesota Railroad Company, and Moses M. Davis, and upon the bill and the answers of the defendants, Selah Chamberlain, J. Albert Helfenstein, trustee, in a mortgage or deed of trust of said company defendants, James Wolstenholme, Guy Tracy, Hor-
154 ace Galpin, Edward Livermore, William Crawshay, Henry G. Gilbert, John Hardy, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Deitz, William Wood, Benjamin F. Dawson, James W. Wood, John

Wells, Ruric Martin, R. J. Burton, D. M. Corbell, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Trift, Jonathan P. Hopper, D. S. Kingore, Noah Sturdevant, William H. Fessenden, John L. Sutherland, E. Haskell Derby, Frederick Levick, Charles Shepherd, C. P. Williams, Orville Oddie, John Pemberton, Niles Higgenbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, T. F. Bergen, John T. Vander built, G. S. Boardman, and John Nicholson, and the replications thereto and proof, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed by the court as follows, to wit: That the report of Winfield Smith, master, and of Jerome R. Brigham and Increase A. Lapham, special masters, appointed by this court, wherein the sum of six hundred and thirty-eight thousand seven hundred and seventy-nine dollars and seventeen cents appears to be due to said complainants at the date of said report for interest on the bonds in the mortgage mentioned in this bill, numbered from one to nineteen hundred and ninety-one, both inclusive, and one million nine hundred and ninety-one thousand dollars for principal on the said bonds; and also sixty-five thousand three hundred and twenty-one dollars and sixty-seven cents for interest on five hundred and nine of the said bonds included in said mortgage,
155 numbered from nineteen hundred and ninety-two to twenty-five hundred, both inclusive, and two hundred and three thousand six hundred dollars for principal of the same; and also one hundred and ninety-two thousand five hundred dollars for interest on fourteen hundred and fifty of said bonds of one thousand dollars each, included in said mortgage, numbered from two thousand five hundred and one to three thousand nine hundred and fifty, both inclusive, and on one hundred of said bonds mentioned in said mortgage, of five hundred dollars each, and numbered from one to one hundred, both inclusive, and also six hundred thousand dollars of principal of said bonds—which said several sums of interest, amounting to eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and the amount of principal of said bonds, is found to be two millions seven hundred and ninety-four thousand dollars, be, and hereby is, confirmed.

And it is further ordered, adjudged and decreed by the court that all and singular the mortgaged premises mentioned in the bill of complaint in this cause and hereinafter described, or so much thereof as may be sufficient to raise the amount due the complainants for principal and interest, and the costs in this cause, (and which be sold separately without material injury to the parties interested as hereinafter directed,) be sold at public auction, under the direction of the marshal for this district, unless the mortgagors, previous to such sale, pay into court the said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, and interest thereon from this date, together with the costs in this cause to be taxed.

And it is further ordered that the said sale be made at the post office in the city of Milwaukee, within this district, and that
156 said marshal give public notice of the time and place of such sale by advertisement published in some newspaper in the city

of La Crosse, and in the city of New York, once in each week for three months previous to the day of sale, and that the complainants, or the bond-holders, or any of the parties to this cause, may become the purchaser thereof; and that the said marshal, after the confirmation of said sale by the court, execute a deed or deeds to the purchaser or purchasers of the mortgaged premises, and that the said marshal bring into court for distribution among the bond-holders and other lien creditors, the proceeds of said sale; and that the bonds secured by the mortgage described in this bill may be received in part payment of the proceeds of such sale, in the proportion as each bond at the principal thereof, for the amount thereof, according to this decree, (that is, the first nineteen hundred and ninety-one bonds at par, and the remainder at four hundred dollars on the thousand dollars,) bears to the amount of said sale.

And it is further ordered, adjudged and decreed by the court that the defendant, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises, and every part and parcel thereof.

And it is further ordered, adjudged and decreed by this court that the purchaser or purchasers of said mortgaged premises at such sale be let into possession thereof, to the extent allowed and granted by the said mortgage.

The description of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained
157 from the mortgage above referred to or from the bill of complaint in this cause, is as follows, viz:

All and singular the several tracts, pieces or parcels of land which now are, or may hereafter be or constitute the site of the roadway, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute or may hereafter constitute, or be a part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from Portage City to La Crosse; and also all and singular the superstructure of said road, whether now made or to be made hereafter. And all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, whether now built and made, or to built and made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description, which have already been, or may hereafter be, procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils, and other personal property, which have been, or may hereafter be, procured for or used in connection with said roads, or either of them. And also all and singular the rights, liberties, privileges, and franchises of said railroad company of every kind and description relating to said road.

Also "all and singular the lands granted or intended to be granted to said railroad company, under or by virtue of the act of Congress and the act of the legislature of Wisconsin hereinbefore mentioned,

so far as the said lands pertain or are applicable to the construction of said roads from Madison, by way of Portage City, to the St.
158 Croix river or lake, estimated to be about one million of acres of land, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed; and it is hereby declared to be the intention of the parties to these presents to convey to and vest in said parties of the second part all the property, real and personal, of said railroad company, to be acquired hereafter, as well as that which has already been acquired, together with all the rights, liberties, privileges, and franchises of said railroad company, in respect to the roads above mentioned, as fully and amply as the same might be conveyed if the said railroads had already been fully constructed and equipped, and the particular lands granted by the foregoing acts of Congress and the legislature, so far as the same are applicable to the construction of said road from Madison to St. Croix river or lake, hath already been designated and conveyed to said railroad company."

With forty box-cars, numbered 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406, and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by this mortgage bears to the balance or other end of the road since the appointment of the receiver. The remaining rolling stock is subject to prior mortgages.

And it is further ordered by the court that the said described lands granted by the United States be first sold, and if the proceeds of the sale thereof shall be sufficient to pay and discharge the
159 said sum of eight hundred and ninety-six thousand six hundred dollars and eighty-four cents, with interest from this date and costs, if the said sum be released or satisfied or paid into court, further proceedings under this decree shall then be stayed. And if, at any time hereafter, there should be any default in the payment of any interest due on said mortgage, or of the sum of two million seven hundred and ninety-four thousand dollars, the principal thereof, when the same becomes due and payable at the time mentioned in said bonds and mortgage, the court may, upon petition of the complainants, or the holders of said bonds by a further order founded upon this decree, direct a sale of said mortgaged premises, or any part thereof, or of such part thereof as may not be previously sold under this decree, to be made under and in conformity to this decree as aforesaid, for the amount then so due, with the costs of such petition, and the subsequent proceedings thereon, and the same proceedings shall be had as often as a default shall be made.

A. G. MILLER.

Decree signed, recorded, and enrolled, January 13, A. D. 1862.

J. M. MILLER, *Clerk.*

160 *Exhibit No.* 11.

In the district court of the United States for the district of Wisconsin.

GREENE C. BRONSON, JAMES T. SOUTTER and SHEPHERD KNAPP, trustees, complainants,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY, J. Albert Helfenstein, trustee, Selah Chamberlain, Newcomb Cleveland, Edwin Townsend, Franklin J. Blair, Edmund R. Persons, Leman Graham, Daniel D. Scott, Avery Hill, A. V. Rudd, E. Bradford Greenleaf, John H. Tesch, Dewitt C. Freeman, Ephraim Mariner, Thomas Turton, John Sercomb, Sebastian Kuetzger, Frederick Lind, Edward H. Broadhead, Joshua Hathaway, William Geinell, Charles Quentine, August Santhoff, Sebre Howard, Lawrence G. Graham, Donald G. Scott, The Milwaukee and Minnesota Railroad Company, Moses M. Davis, James Wolstenholme, Guy Tracy, Horace Galpin, Edward Livermore, William Crawsha, Henry G. Gilbert John Hanly, George W. Berrian, George Strobel, G. R. Van Allen, James G. Fulton, Moses A. Hoppock, Lereno Gaylord, C. Lewis Zimmerman, Daniel Goodwin, Stephen A. Dodge, Charles F. Dietz, William Wood, Benjamin F. Dawson, James W. Wood, John Wells, Ruric Martin, R. J. Burton, D. M. Corbett, D. Farnsworth, Harvey Terry, James J. Day, W. Catlin, Bruce & Young, John M. Taft, Jonathan T. Hopper, D. S. Kingore, Noah Sturdevant, William W. Fessenden, John L. Sutherland, E. Hackett Derby, Frederick Lewick, Charles
161 Shepherd, C. P. Williams, Orville Oddie, John Pemberton, Niles Higginbotham, George Ashley, William Gould, Nathan Marble, Jacob Van Vechten, P. F. Bergen, John J. Vanderbilt, G. S. Bordman, and John J. Nicholson, defendants.

In chancery.

I, Darius C. Jackson, marshal for the district of Wisconsin, hereby report, that in pursuance and by virtue of a decree made by the district court of the United States for the district of Wisconsin, on the thirteenth day of January, A. D. 1862, as directed in said decree, I gave notice of the time and place of sale by publication once in each week for three months in the La Crosse Republican, a newspaper published in the city of La Crosse, and in the Evening Post, a newspaper published in the city of New York, (a printed copy of

said notices and the affidavits of publication are hereto annexed and referred to as a part of this report,) and I did at the time and place mentioned in said printed notices, to wit, on the 25th day of April, in the year 1863, at two o'clock p. m., at the post office in the city of Milwaukee, then and there first offer for sale and sell at public auction the premises described in said decree, as follows, to wit:

All and singular the lands granted or intended to be granted to said La Crosse and Milwaukee Railroad Company, under and by virtue of an act of Congress of the United States entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," approved June 3, A. D. 1856, and under or by virtue of an act of the legislature of the
162 State of Wisconsin, approved October 11, A. D. 1856, entitled "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company and to execute the trust created by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State, approved June 3, 1856," so far as the said lands pertain or are applicable to the construction of said road from Madison, by way of Portage City, to the St. Croix river or lake, estimated to be about one million of acres of lands, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, situate, lying and being in the State of Wisconsin, which were bid off by William Wallace Pratt and William H. White, for the sum of one hundred and twenty-five thousand dollars, ($125,000 00,) they being the highest and best bidders, and that being the highest and best bid made for the premises described.

And I then offered for sale, and sold in like manner, the balance of the premises and property described in said decree, as follows, to wit: all and singular the several tracts, pieces, or parcels of land which constitute the site of the roadway, turnouts, engine-houses, workshops, depots and other buildings, and all the other lands and real estate which constitute part of the roads of said railroad company from Madison, by way of Portage City, to the St. Croix river or lake, between townships 25 and 31, and from Portage City to the La Crosse; and also all and singular the superstructure of said roads, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or pertaining to said roads, and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description
163 which have been procured for or used on said roads, or either of them, and all the materials, tools, implements, utensils and other personal property which have been procured for or used in connection with said roads or either of them; and also all and singular the rights, liberties, privileges and franchises of said La Crosse and Milwaukee Railroad Company, of every kind and description, relating to said roads, (of said rolling stock forty box cars, numbered respectively 330, 332, 334, 336, 338, 340, 342, 344, 346, 348, 350, 352, 354, 356, 358, 360, 362, 364, 366, 368, 370, 372, 374, 376, 378, 380, 382, 384, 386, 388, 390, 392, 394, 396, 398, 400, 402, 404, 406,

and 408, and such proportion or share of rolling stock purchased and procured by the receiver, costing one hundred and forty-seven thousand nine hundred and forty-two dollars and sixty-three cents, as the net revenues of the portion of road covered by the aforesaid mortgage bear to the balance or other end of said road, was sold free and clear of all lien or incumbrance; but the remainder of the above mentioned rolling stock was sold subject to the lien of mortgages prior in date to the mortgage above mentioned given by said La Crosse and Milwaukee Railroad Company,) together with the lots, rents and income to be had or levied therefrom, and all corporate and other rights, franchises and privileges of the said company, of, in, and to or concerning the same, being all the property, real or personal, described in the said mortgage, (except the lands therein mentioned, granted by Congress to the State of Wisconsin,) and all and singular the privileges, hereditaments and appurtenances to the same belonging, or in anywise appertaining, situate, lying and being in the State of Wisconsin, which was bid off by William Wallace Pratt and William H. White, for the sum of two million six hundred and seventy-five thousand dollars ($2,675,000,) they being the highest and best bidders, and that being the highest and best bid
164 made for the premises last above described.

And I further report that said purchasers have complied with both of their said bids, and have paid to me the sum of two million eight hundred thousand dollars, as follows:

Said sum is $1.00.1932 on each dollar of the principal of the bonds secured by the said mortgage, as fixed by the decree in this cause. Said purchasers have paid twenty-seven hundred and eight thousand six hundred and twenty-three $\frac{8}{100}$ ($2,708,623 $\frac{08}{}$) in bonds secured by said mortgage, as follows: Nineteen hundred and thirty-nine (1,939) of said bonds, numbered between 1 and 1991, inclusive, for one thousand dollars each; eighteen hundred and sixty-five (1,865) of said bonds for one thousand dollars each, numbered between 1992 and 3950, inclusive; and ninety-two bonds for five hundred dollars each, numbered between 1 and 100, inclusive; and ninety-one thousand three hundred and seventy-six dollars and twenty-two cents ($91,376 $\frac{22}{100}$) in cash; all of which amounts to $1.00.1932 on the dollar of the principal of all the bonds outstanding and secured by said mortgage.

DARIUS C. JACKSON, *U. S. Marshal*,
By W. S. JACKSON, *Deputy*.

165 *Exhibit No.* 12.

And afterwards, to wit, at a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the first Monday (being the fifth day) of January, A. D. 1863. Present: the honorable Andrew G. Miller, judge of said court, presiding:

On the twelfth day of said term, to wit, on the fifth day of May, A. D. 1863, the following proceedings were had, to wit:

GREENE C. BRONSON, JAMES T. SOUTTER,
and SHEPHERD KNAPP, trustees,
vs.
LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
J. ALBERT HELFENSTEIN, trustee, *et als.*

This day came the parties, by their counsel, and the argument of the several exceptions to the sale of the mortgaged premises by the marshal being concluded, it was ordered by the court that said exceptions be, and hereby are, overruled.

And it is further ordered and decreed by the court that the said sale so as aforesaid made be, and hereby is, confirmed, and that the marshal make a deed to the purchasers.

166 *Exhibit No.* 13.

This agreement, made and entered into this 26th day of September, A. D. 1862, by and between the Milwaukee and Minnesota Railroad Company, party of the first part, and Greene C. Bronson and James T. Soutter, trustees named in a certain deed of trust or mortgage dated on or about the 17th day of August, 1857, made by the La Crosse and Milwaukee Railroad Company, a corporation duly authorized to make the same, to secure the payment of the sum of one million of dollars and the interest thereon, according to the bonds therein described and set forth, party of the second part, witnesseth: that whereas a suit or action has been commenced in the U. S. district court for the district of Wisconsin, by said party of the second part, for the foreclosure of said mortgage, and a decree entered therein, and the same has been duly appealed from by said party of the second part to the Supreme Court of the United States, where the same is now pending; and whereas it has become desirable, for the interest of the railroad company and both parties, that the litigation be closed as early as possible, with a view to laying the foundation for a general settlement of all interests involved therein, and the keeping the said La Crosse and Milwaukee railroad from being divided, to the great injury of the parties interested, including the city of Milwaukee: therefore, the parties hereto, in consideration of the premises, and of one dollar paid by each party to the other, the receipt whereof is hereby acknowledged, do hereby agree and covenant to and with each other as follows, viz:

First. The party of the first part will execute in due form, and procure to be executed in due form, by A. Fleming, Sebre
167 Howard, J. S. Rockwell, and Graham & Scott, (parties defendant to the suit or action hereinbefore mentioned,) their heirs, executors, assigns, or representatives, stipulations, memorandums, or agreements to be used in the Supreme Court of the United States, in the circuit court of the United States, embracing said district of Wisconsin, or in any other court where it may be necessary, giving and granting to the said party of the second part a decree in their said suit or action according to the prayer of their bill of complaint, and fixing the interest due upon said bonds on the first day

of September, 1862, at the liquidated sum of two hundred and eighty thousand dollars, together with their costs, charges, allowances, and disbursements.

Second. The said party of the first part further covenants and agrees to and with the party of the second part, that for the purpose of securing the payment of said interest in arrears, and other purposes, it will execute in due form of law, with proper and apt covenants, and deliver to one or more trustee or trustees, a mortgage upon said railroad from Milwaukee to La Crosse, together with all its appurtenances and franchises, and all the rights and franchises of the said The Milwaukee and Minnesota Railroad Company, or to which in any manner the said party of the first part may be entitled, to secure the payment of bonds not exceeding in the aggregate amount one million of dollars; and the said mortgage shall be subject only to prior liens, mortgages, and incumbrances upon the said railroad and property appertaining thereto, in the amount of five million of dollars, including as part of said liens the mortgage to said second party first herein mentioned. The bonds to be issued under said mortgage for one million of dollars shall mature in the year 1872; shall bear interest at 6 per cent., payable semi-annually
168 in the city of New York, on the first days of April and October, in each year; the first coupon shall be payable October 1, 1863.

And it is further covenanted and agreed by said party of the first part, that it will execute, and to said party of the second part, their attorney or successors, one thousand bonds of two hundred and eighty dollars each, numbered from one to one thousand, inclusive, secured by said mortgage as aforesaid, in trust for the satisfaction of the coupons in arrears and unpaid, embraced in the said decree hereinbefore stipulated for; and the same, when paid, are to be received in satisfaction of said coupons.

And it is further covenanted and agreed, that if said party of the first part shall fail to obtain the control of the whole of said railroad from Milwaukee to La Crosse within one year from the date hereof, then, and in that case, the payment of said arrears of interest shall be secured in bonds, as hereinbefore described, but secured by a mortgage upon the portion of said railroad from Milwaukee to Portage City, and all its appurtenances and the franchises of the said Milwaukee Railroad Company; and the whole amount of bonds then, and in that case, to be issued under the same, shall not exceed the sum of six hundred thousand dollars, and be payable as hereinbefore set forth; and the said railroad from Milwaukee to Portage City, embraced in said mortgage and its appurtenances, shall be subject only to prior liens, mortgages, and incumbrances, including as aforesaid in the amount of two million two hundred thousand dollars.

Third. The party of the first part further covenants and agrees, that whereas the stipulations following for the discharge of the receiver appointed under the proceedings in foreclosure aforesaid are entered into by said party of the second part only upon the
169 consideration of the decree hereinbefore stipulated for being entered in said cause in due course of legal proceedings under

this agreement, now, therefore, it is agreed that the party of the first part shall, with reasonable diligence, move, in conjunction with the party of the second part, to perform all the stipulations herein contained as to said decree; and if, in due course of legal proceedings in said foreclosure suit, and within one year from date of this agreement, for any reason whatever, said decree shall be refused and denied by the court wherein said decree in said cause shall properly be entered—that is, if in consequence of interference or opposition of any of the parties to said cause, or any other person or persons other than the party of the second part, said decree shall be denied, or if said decree shall be refused and denied by the court for any reason whatever, then the party of the first part shall immediately on demand, deliver said road, franchises, and all other things appurtenant or belonging to said road, and from which said receiver shall have been discharged under this agreement, to said party of the second part; or if the interest stipulated to be paid as set forth in article five of this agreement, or any portion thereof, shall not be paid as therein provided, then, within sixty days after such default, the said party of the first part will forthwith surrender said road, rolling stock, and all its franchises and appurtenances, from which the receiver shall be discharged under this agreement or otherwise, to said party of the second part, their successor or successors, attorneys or agents, upon demand made by them or either of them for the same. And the party of the first part stipulates that this agreement may be enforced by the proper court as by consent of parties, either in this cause or any other cause that may be pending in relation to said railroad.

Fourth. The said party of the second part, in consideration of the hereinbefore recited covenants, stipulations and agreements to be kept and performed by the said party of the first part, agree, that so soon as counsel can be heard in the district court of the United States for the district of Wisconsin, or in the circuit court of the United States embracing said district, or any other court where said motion can be made, the said party of the first part may move for an order of said court discharging said receiver; and the said party of the second part will, by written stipulation in said cause, assent thereto, and the party of the first part may enter into the possession of said railroad, and other property appurtenant thereto, with such assets as shall be found in the hands of the receiver, or be under his control.

Fifth. Said party of the second part further covenant and agree, that if the said party of the first part shall execute and deliver the one thousand bonds for two hundred and eighty dollars each, as hereinbefore described, secured and subject only as herein stipulated, at any time within one year from the date hereof, the said party of the second part will receive the same, to be applied on said interest included in said decree; and no sale under said decree shall be had without the consent of said party of the first part, its successors or assigns, so long as the interest on the said bonds issued under the mortgage given to the party of the second part first herein mentioned, becoming due on the first day of March, 1863, and thereafter accru-

ing, the principal sum of one million of dollars secured by said mortgage, the interest upon bonds issued by the city of Milwaukee in aid of the building of that part of the road between Milwaukee
171 and Beaver Dam, and the interest and sinking fund upon the first mortgage of the La Crosse and Milwaukee railroad from Milwaukee to Portage City, shall each and all be paid and discharged at the times respectively set forth for the payment of each and every of the same in the several deeds, mortgages, and agreements creating them liens upon said railroad, or within the sixty days in the said several deeds specified.

It is understood, however, that the stipulations for decree hereinbefore provided for shall express that said stipulations are made subject to the condition that the said party of the first part shall, by the order or consent of the proper court, have previously obtained, or simultaneously with the entering of said decree shall obtain, possession of the railroad franchises, and other things covered by the mortgage first herein mentioned, in the possession of the receiver in said foreclosure suit.

MILWAUKEE & MINNESOTA R. R. CO.,
[SEAL M. & M. R. CO.] By MOSES KNEELAND, *President.*
GREENE C. BRONSON, [SEAL.]
JAMES T. SOUTTER, [SEAL.]
Trustees.

By their attorney in fact, PRENTIS DOW.

Attest: DWIGHT W. KEYES, *Secretary.*

172 *Exhibit No.* 14.

In the Supreme Court of the United States of America.

GREENE C. BRONSON AND JAS. T. SOUTTER, trustees, &c., complainants,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others, defendants.
} In equity.

Appeal from the district court U. S. for the district of Wisconsin.

It is hereby stipulated by the parties to the above entitled cause, that the decree in this cause rendered be so reformed that a decree be entered by the Supreme Court in favor of the complainants, according to the prayer of their bill; and that the amount of interest due on the mortgage mentioned in the bill of complaint up to Sept. 1, 1862, be liquidated at two hundred and eighty thousand dollars; and that said cause be remanded according to law, to have such decree fully carried into effect, or that the decree in said cause be reversed; and that the cause be remanded according to law, with directions to the court below to enter decree according to this stipulation. This stipulation is entered into in pursuance of a certain contract, a copy of which is hereto attached, marked Exhibit No. 1, and made part of this stipulation; and this stipulation is upon the express condition that the Milwaukee and Minnesota Railroad Company shall

have obtained possession of the railroad franchises, and other things now in the hands of the receiver in this cause, either before said decree shall be entered, or simultaneously with the entering of
173 said decree shall obtain such possession.

Dated Sept. 26, 1862.

LEVI HUBBELL,
Solicitor for Sebre Howard, dec'd, and of Charles Howard, assignee of judgment of S. Howard.
MAT. H. CARPENTER,
Solicitor of Graham & Scott, the Milwaukee and Minnesota Railroad, and Alexander Fleming, def'ts.
LEVI HUBBELL,
Solicitor for John S. Rockwell, def't.
THOS. L. OGDEN,
Sol. for Complainants.
JAS. S. BROWN,
Of Counsel.

174 *Exhibit No.* 15.

In circuit court of the United States for the eighth circuit and dist. of Wisconsin.

GREENE C. BRONSON and JAS. T. SOUTTER, trustees, &c., complainants,
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others, defendants.
} In equity.

It is stipulated by the parties to this cause that the said court shall reform the decree entered in this cause so as to enter a decree in the above-entitled cause in favor of said complainants, according to the prayer of the bill of complaint, and liquidating the amount of interest due on the mortgage mentioned in said bill up to Sept. 1, 1862, at two hundred and eighty thousand dollars.

This stipulation is made in pursuance of an agreement, a copy of which is hereto attached and marked Exhibit No. 1, and made part of this stipulation; and this stipulation is made upon the express condition that the Milwaukee and Minnesota Railroad Company shall, with the assent of the court, have obtained possession of the railroad franchises, and other things in the receiver's hands in this cause, before the entering of said decree, or shall thus simultaneously with the entering of such decree obtain such possession.

Dated September 26, 1862.

THOS. L. OGDEN,
Solicitor for Complainants.
MAT. H. CARPENTER,
Solicitor for Graham & Scott, the Milwaukee and Minnesota Railroad Company, and Alexander Fleming, def'ts.
LEVI HUBBELL,
Solicitor for Sebre Howard, deceased, and of Chas. Howard, assignee of S. Howard and John S. Rockwell, def'ts.

175 *Exhibit No.* 16.—*Lease.*

The La Crosse and Milwaukee Railroad Company to Selah Chamberlain:

Articles of agreement made and entered into by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, at the city of Milwaukee and State of Wisconsin, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

The said party of the first part, in consideration of the undertakings and agreements of the said party of the second part, hereinafter contained, hereby sells and conveys to the said party of the second part all its personal property of every name, kind, and description in the State of Wisconsin, except all such personal property as is used in and is appurtenant to the operation of the Watertown division of the La Crosse and Milwaukee railroad, of which said property an inventory and schedule shall be made and attached hereto so soon as the same can be conveniently done.

And the said party of the first part, in consideration of the said undertakings and agreements of the said party of the second part, hereby leases and lets to the said party of the second part, from and after the thirtieth day of September, in the year 1857, for an indefinite term of time, to be determined in the manner hereinafter specified, its entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its right of way, depot grounds, and all buildings, tenements, and fixtures, of whatsoever kind or description, connected therewith or appurtenant thereto, together with all estate, rights, privileges, and appurtenances, and franchises connected therewith, or belonging, or incident therto, subject only to such prior and superior liens as may or do exist thereon, and all existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad.

It is mutually agreed that the said party of the second part shall, from and after the said thirtieth day of September, and until this agreement shall be terminated in the manner hereinafter provided, operate so much of the said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation in such manner as will produce the largest amount of net receipts. That the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair, and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad.

It is further mutually agreed that the said party of the second part

may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

The said party of the second part hereby undertakes and agrees that he will defray all the current cost and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the cost and expenses of operating the said railroad, and that he will by the fifteenth day of every month make out and deliver to said party of the first part a correct statement, exhibiting the total receipts and income of said railroad from all sources during the next preceding month; also the cost and expenses, during such month, of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expense of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expense of rolling stock, and repairs, and of operating, and that he will at any time, on demand of said company or its president or secretary, furnish to the person demanding the same a statement in detail of the items of which such statement is composed, and any officer or agent of said company, authorized by said company to do so, shall at any time have the right to examine the accounts of said party of the second part relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expenses of repairs and operating, as exhibited by the said monthly statements as aforesaid, shall be appropriated by him in the manner following, to wit:

1. To the payment of all coupons hereafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company, secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage City, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust, bearing date February 18, 1856, except such of said coupons as are payable November 1st, 1857, and the sinking fund of twelve thousand dollars, payable November 1, 1857.

2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars, of bonds of the city of Milwaukee, issued to the Milwaukee, Fond du Lac, and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

3. To the payment of all coupons hereafter to become due on two hundred thousand dollars, of the bonds of the city of Milwaukee, issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date the thirtieth day of July, A. D. 1854.

4. To the payment of all coupons hereafter to become due on one million of dollars, of the bonds of the said railroad company, secured by mortgage or deed of trust on the railroad of said company, from

Milwaukee to Portage City, and from Watertown to Midland, bearing date the day of , A. D. 1857.

5. Whatever balance of said net receipts, as aforesaid, shall
176 remain after the payment of the said coupons and sinking fund shall be applied by said party of the second part in payment of the amount due, or hereafter to become due, to him by virtue either of a certain contract between said parties, dated January twentieth, 1857, a supplemental contract between said parties, dated April 30th, 1857, or a certain contract between said parties, dated November 20th, 1856, or of a contract modifying said contract entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter done between New Lisbon and La Crosse, which is to be paid for from the means of the said company other than the said income.

And the said party of the second part further undertakes and agrees that whenever he shall have received from the earnings of the said railroad such sum as by the terms and conditions of the aforesaid contract for the construction of the said railroad, bearing date respectively November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive, according to the terms and conditions of the said contract, that he will surrender up to the said party of the first part the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements and fixtures of whatsoever kind or description connected therewith, or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises, and appurtenances connected therewith, or belonging or incidental thereto, including all the railroad buildings, tenements, fixtures, and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part, by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed which shall not have been worn out, destroyed or consumed in the construction or operation of the said railroad, and that he will convey and deliver to said party of the first part all personal property which shall have been acquired for said railroad in pursuance of this contract, or with the means derived from the receipts from said railroad, and that he will at such time deliver on the line of said railroad, to said party of the first part, fifteen thousand cords of wood, and that whenever the said party of the second part shall have received, as aforesaid, such sum as he shall be entitled to, as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void.

In witness whereof, the said party of the first part hath caused these presents to be signed by its president and secretary, and its

corporate seal to be hereto affixed, and the same are signed by the said party of the second part.

(Signed)
LA CROSSE & MILWAUKEE RAILROAD COMPANY,
[L. S.] By BYRON KILBOURN, *President.*
JACKSON HADLEY, *Secretary.*
S. CHAMBERLAIN. [L. S.]

Signed, sealed, and delivered in the presence of—
H. L. PALMER.
THOMAS W. BEAVER.

STATE OF WISCONSIN,
Milwaukee County, ss:

Be it remembered, that on this twenty-sixth day of September, in the year one thousand eight hundred and fifty seven, before the subscriber, a notary public, residing in the city of Milwaukee, personally appeared Byron Kilbourn, to me known, who, being by me duly sworn, said that he resides in the city of Milwaukee, Wisconsin; that he is the president of the La Crosse and Milwaukee Railroad Company; that the seal affixed to the annexed instrument is the common and corporate seal of said company, and was affixed thereto by their authority; and that he, as president, and Jackson Hadley, as secretary, subscribed their names thereto by like authority; and on the same day before me personally appeared Selah Chamberlain, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same freely for the uses and purposes therein mentioned.

(Signed) H. L. PALMER,
Notary Public, Milwaukee County.

Contract.

La Crosse and Milwaukee Railroad Company with Selah Chamberlain.—Copy from directors' minutes.

Resolved, That a contract be entered into with Selah Chamberlain, which shall be signed by the president and secretary, and sealed with the corporate seal of the company, in the words and figures following, to wit:

This indenture, made and entered into this twenty-sixth day of September, in the year of our Lord one thousand eight hundred and fifty seven, by and between the La Crosse and Milwaukee Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Wisconsin, party of the first part, and Selah Chamberlain, of the city of Cleveland and State of Ohio, party of the second part, witnesseth, that the said parties have mutually undertaken and agreed, and by these presents do undertake and agree, to and with each other, that the contract heretofore entered into between the said parties, for the construction of the western division of the La Crosse and Milwaukee railroad from Portage City

to La Crosse, excepting the bridge across the Wisconsin river at Kilbourn City, and which contract bears date the 20th day of January, A. D. 1857, and the supplemental contract entered into between the same parties, and bearing date the 30th day of April, A. D. 1857, shall be, and the same are hereby, modified as follows, to wit :

The said party of the second part shall proceed to complete the construction of said railroad as far as the depot at New Lisbon, in the county of Juneau, with reasonable despatch, and by the first day of December next.

177 The time for completing the said railroad from New Lisbon to La Crosse is extended indefinitely, and the said party of the second part shall construct the said railroad between the two last-named points as fast as and no faster than the said party of the first part shall be prepared and ready to pay the said party of the second part for the same in cash, or monthly estimates, according to the terms and stipulations of the aforesaid contract.

The contract entered into by and between said parties on the 20th day of November, A. D. 1856, for the ballasting that portion of the La Crosse and Milwaukee railroad extending from Beaver Dam to Portage City, is hereby so modified that the said party of the first part shall not provide or furnish the motive power and cars requisite for doing said work, but that the motive power so used shall be a part of that specified in a contract between said parties entered into simultaneously with this contract for the leasing of said road, and that said party of the second part shall, for all ballasting which he shall do on said railroad between Milwaukee and Beaver Dam, under the direction and by order of the chief engineer of said company, be paid at the rate of fifty cents per cubic yard, to be measured to the gravel pit from whence the material shall be taken.

In consideration of the aforesaid extension of the time of constructing the said railroad from New Lisbon to Portage City, and of the damages which the said party of the second part will sustain by reason of such extension and by loss, as teams, material, tools, machinery, and in other ways, and also in consideration of the mode in which the said party of the second part is to be paid the amount now due to him, and the amount to become due to him for finishing said railroad to New Lisbon, and in consideration of the failures and delays of the said party of the first part in making payments to the said party of the second part upon estimates heretofore due, and in further consideration of the services, risks, and personal expenses of the said party of the second part in the operation and management of said railroad, as hereinafter referred to, and more particularly set forth in said contract of lease, the said party of the first part hereby agrees to pay to the said party of the second part the liquidated sum of two hundred thousand dollars, which sum is mutually agreed upon by said parties as an equivalent for the aforesaid consideration.

It is further stipulated and agreed that by or before the 20th day of October, A. D. 1857, a full and correct statement shall be made out of the amounts due to the said party of the second part, on the 30th day of September, 1857, under and by virtue of the said con-

tract of January 20th, 1857, April 30th, 1857, and November 20th, 1856, which sum, together with the aforesaid sum of two hundred thousand dollars, ($200,000,) shall be the balance due to the said party of the second part on the 1st day of October, 1857, and shall be charged by said party of the second part to the said party of the first part, and on the first day of every month thereafter the said party of the second part shall charge the said party of the first part with the amount which shall be due under or by virtue of either of said contracts, or this contract, in constructing the said railroad between Portage City and New Lisbon, or in ballasting between Milwaukee and Portage City, and shall credit said party of the first part with such sum as the said party of the first part shall be entitled to receive from the net earnings of the said railroad, by virtue of the said contract of lease entered into between said parties, simultaneously with these presents.

It is further agreed between the said parties that on the 1st day of July, 1858, and on the first day of each July and each January thereafter, a semi-annual statement of the accounts between said parties shall be made out, in which interest shall be computed up to the day of making out such accounts, at the rate of twelve per cent. per annum.

It is further agreed between the said parties, whatever sums shall hereafter become due to said party of the second part for any work done on the construction of said railroad between New Lisbon and La Crosse shall be paid to him by said party of the first part from the means of said company derived from other sources than the income of said railroad.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and the corporate seal of said company to be affixed thereto, and the said party of the second part has affixed his signature and seal the day and year first above written.

(Signed)

LA CROSSE & MILWAUKEE RAILROAD COMPANY,

[L. S.] By BYRON KILBOURN, *President.*

JACKSON HADLEY, *Secretary.*

S. CHAMBERLAIN. [L. S.]

LA CROSSE AND MILWAUKEE R. R. CO.,
Secretary's Office, Milwaukee, April 23, 1858.

I hereby certify that the foregoing resolution is a true copy of a resolution adopted by the board of directors of this company at a special meeting held at Milwaukee on the 26th day of September, 1857, and that the preceding contract is a true and correct copy of, and the whole of the contract therein referred to, as appears from the recorded minutes.

RICHARD DOTY, *Secretary.*

178 *Exhibit No.* 17.

To the judge of the district court of the United States for the district of Wisconsin, in equity:

Newcomb Cleveland, of the State of Illinois, and a citizen of said State of Illinois, brings this his bill against the La Crosse & Milwaukee Railroad Company, a corporate body, created and existing by and under the laws of the State of Wisconsin, and Byron Kilbourne, Moses Kneeland, James Ludington, D. C. Freeman, Charles D. Nash, citizens of the State of Wisconsin, and Selah Chamberlain, of the State of Ohio, and a citizen of the State of Ohio, defendants.

And thereupon your orator complains and says that heretofore, to wit, on the 7th day of October, A. D. 1857, in the district court of the United States for the district of Wisconsin, by the consideration and judgment of said court, your orator recovered against the said La Crosse and Milwaukee Railroad Company the sum of one hundred twelve thousand two hundred and seventy-one dollars and seventy-six cents for the damages which he had sustained, as well by the breaches of the said company, defendant's several covenants to and with your orator, as for the costs and charges of your orator by him about his suit in that behalf expended, which were adjudged to your orator in and by said court, whereof the said company, defendant, was convicted on the day and year last aforesaid, as by the record of said judgment in the office of the clerk of said court (reference being thereto had, and to which for greater certainty your orator prays leave to refer) will more fully and at large appear.

And your orator further shows unto your honor that said judgment so recovered as aforesaid, remaining in full force and unpaid,
179 and the whole amount thereof remaining unpaid and unsatisfied. Your orator on or about the 22d day of October, A. D. 1857, for the purpose of obtaining satisfaction of said judgment, sued and prosecuted out of the said district court a writ called a writ of *fieri facias*, directed to the marshal of said district of Wisconsin, by which said writ the said marshal was commanded that of the goods and chattels of the said La Crosse & Milwaukee Railroad Company, defendant, in his district, he should cause to be made the sum aforesaid, recovered as aforesaid by your orator; and that if sufficient goods and chattels could not be found, then to cause the said amount to be made of the lands and tenements of said company, defendant, which it had at the time of docketing said judgment, to wit, on the 7th day of October, A. D. 1857, or at any time thereafter, and was afterwards, to wit, on the 22d day of October, A. D. 1857, delivered to the said marshal to be executed in due form of law, and that afterwards, to wit, on or about the 27th day of October, A. D. 1857, the said marshal levied said writ of *fieri facias* upon the following described property, to wit, at the city of Milwaukee, in said district, that is to say: The La Crosse & Milwaukee railroad and all the interest of the La Crosse & Milwaukee Railroad Company therein, with all the franchises, rights and privileges thereunto belonging and apper-

taining, including roads, roadways, rights of way and real estate of every description, road beds, tracks, ties, rails, station-houses and buildings and grounds, sheds and grounds, engine-houses and grounds, shops and grounds, water-houses and grounds, cars and appurtenances, locomotive engines and appurtenances, more particularly described as follows, viz: One passenger depot, one storehouse, two freight depots, grain platform and shed, blacksmith shop, three
180 tank-houses, machine-shop, stationary engine-house, paint-shop, lumber-house, coppersmith-shop, iron-house, blacksmith shop, turntable, circular engine-house, car-shop, all in the city of Milwaukee; tank-house on section 12 of said railroad; one ditto on section 22; passenger and freight depot at Richfield; one turntable and passenger and freight depot at Schleisingerville; engine-house, tank-house, and passenger and freight depot at Hartford; passenger and freight depot at Rubicon; passenger and freight depot and tank house at Woodland; ditto at Iron Ridge; turntable, passenger and freight depot, engine-house and tank-house at Horicon; passenger and freight depot at Junction; ditto at Rolling Prairie; turntable, engine house, tank-house, and passenger and freight depot at Beaver Dam; passenger and freight depot and tank-house at Fox Lake; passenger and freight depot at Cambria; passenger and freight depot, turntable, tank-house and engine-house at Midland; passenger and freight depot, turntable, engine-house and tank-house at Portage City, together with the grounds upon which such houses and buildings are situated, and which are appurtenant thereto, twenty-one locomotive engines, 10 first-class passenger cars, 2 second-class ditto, 4 baggage cars, 164 house freight cars, 120 platform cars, 30 gravel cars and 17 hand cars.

Also all that portion of the La Crosse & Milwaukee railroad known as the Watertown division of said railroad, and all the interest of the said La Crosse & Milwaukee railroad company therein, with all the franchises, rights and privileges thereunto appertaining, including roads, roadways, rights of way and real estate of every description, road-beds, tracks, ties, rails, station-houses, buildings and
181 grounds, shops and grounds, water-houses and grounds, engine houses and grounds, cars and appurtenances, locomotives and appurtenances; also about 45,000 bars of railroad iron, more particularly described as follows, viz: One engine-house in the city of Milwaukee; one station-house at the junction; one ditto and woodshed at Pewaukee; one station-house at Hartland; one ditto at Pine Lake station; one water-house, one woodshed and one station-house at Oconomowoc; one station-house, frame shed, machine-shop, car-shop, blacksmith shop, two water-houses, engine-house and woodshed at Watertown; station-house and water-house at Lowell; station-house, engine and water house at Columbus, together with the grounds upon which such houses and buildings are situated, or which are appurtenant thereto; 7 locomotive engines, 67 box cars, 35 rack cars, 10 hand cars, 4 passenger cars and two baggage cars, 20 dump cars, about 42,612 bars of railroad iron, lying piled in lots in block 40 and 41 in the 2d ward in the city of Milwaukee; also lots 9, 10 and 11 in

block 3, and lots 1, 2 and 3 in block 47, in the fifth ward of the city of Milwaukee; lots 1 and 4 in block 156; lots 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, in block 155; ⅓ of block 157, except lot 8, and the bayou adjoining said block; ⅓ of lots 8, 9 and 10; all of lots 12, 13 and 14; ⅓ of lots 16 and 17 and E. ½ of 15 in block 158, in the 4th ward of the city of Milwaukee.

All of which said property was then and there, to wit, at the time of said levy, situated in said district of Wisconsin, and was the property, goods, chattles, rights, franchises, lands and property of the said La Crosse & Milwaukee Railroad Company, subject to levy of execution, or *fieri facias*, in manner and form as aforesaid. And all of

182 which said property the said marshal afterwards, to wit, on the 30th day of October, A. D. 1857, advertised for sale at public auction, according to law, to satisfy said writ, to wit, on the 15th day of December, A. D. 1857, at the said marshal's office, in the said city of Milwaukee, in said district, at the hour of 10 o'clock a. m. of that day, as the law in that behalf requires, as by the said writ of *fieri facias*, and the directions and certificate of said marshal thereon endorsed and now in the hands of the said marshal, will more fully appear, and to which, or a copy thereof, your orator prays leave to refer.

And your orator further shows that the whole of said judgment yet remains unpaid and unsatisfied, and the said judgment remains in full force, unreversed and unannulled, and that no part of the said judgment has been paid to your orator, but that to pay the same the said defendant company ever has and still does neglect and refuse; and your orator shows that there is now equitably and actually due to your orator on said judgment the sum of one hundred twelve thousand two hundred and twenty-one dollars and seventy-six cents, together with interest on the sum of one hundred eleven thousand seven hundred and twenty-seven dollars and 71 cents thereof, from the day of the rendition of said judgment as aforesaid, over and above all just claims of the said The La Crosse and Milwaukee Railroad Company, defendant, by way of offset or otherwise; and that this bill is not exhibited by collusion with the said The La Crosse and Milwaukee Railroad Company, nor for the purpose of protecting the property, rights or effects of said company, defendant, nor any part thereof, against the claims of other creditors, but for the sole purpose of obtaining the relief hereinafter prayed.

183 And your orator further shows that the said La Crosse and Milwaukee Railroad Company, defendant, at Milwaukee, in said district, heretofore, to wit, on the 26th day of September, A. D. 1857, designing and intending to injure, delay, cheat, and defraud the creditors of said company, and to injure, delay, cheat, hinder, and defraud your orator of his just debt and damages against said company, did pretend to make, and in form did make, seal, execute and deliver to one Selah Chamberlain (whom your orator prays may be made a defendant to this bill) a pretended lease, in and by which said lease, dated the day and year last aforesaid, the said La Crosse and Milwaukee railroad pretended to and did express that it, said

company, did sell and convey to said Selah all its personal property of every name, kind and description in the State, district of Wisconsin, except all such personal property as was then used in and was then appurtenant to the operation of what is known and called the Watertown division of the La Crosse and Milwaukee railroad, and did pretend to, and in said lease did, express that it, said company, did let and lease to said Selah, from and after the 30th day of September, A. D. 1857, for an indefinite term of time, to be determined in the manner thereinafter specified, its, said company's, entire railroad and railroad route from the city of Milwaukee, by way of Horicon and Portage City, to the city of La Crosse, together with its, said company's, rights of way, depot grounds, and all buildings, tenements and fixtures of whatever kind or description connected therewith or appurtenant thereto, together with all estate, rights,
184 privileges and appurtenances and franchises connected therewith or belonging or incident thereto, subject only to such prior or superior liens as might or did exist thereon, and all their existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee railroad, which said pretended lease contained many covenants and agreements between said company and said Selah, intended, as your orator is informed and believes and therefore says, to make said lease look and seem more specious and circumstantial, and to cover still deeper the fraudulent design of said company in making said lease.

And your orator further shows to the court that after the making and delivery to said Selah of said lease as aforesaid, to wit, on the day and year last aforesaid, the said Selah entered into possession of all the property, rights, privileges and franchises described, enumerated, and mentioned in said lease, and ever since has taken and received, and is now taking and receiving, all tolls and profits, income and revenue of said company's said railroad and other property described in said lease aforesaid.

Your orator is informed and believes, and therefore so says, that said company had no legal right or competent authority to make said lease; that the same was made to delay and defraud your orator as a creditor of said company, and is directly in fraud of his rights, and constitutes, in connection with said Selah's possession and claim of title thereto under the same, a cloud upon your orator's right to sell said property on your orator's said writ of *fieri facias*, and
185 seems to be, and is, an impediment in the way of your orator's said writ; and the said Selah is now in possession of all the said property, rights, franchises and privileges, and claims and pretends to be the *absolute owner* of all the said personal property so expressed in said lease to be sold to him, said Selah.

And your orator further shows that at Milwaukee, in said district, heretofore, to wit, on the 30th day of September, A. D. 1857, the said company, defendant, designing and intending to cheat and hinder, delay and defraud your orator and the creditors of the said company, did pretend to and in form did make, subscribe, seal and deliver to one D. C. Freeman (whom your orator prays may be made

a defendant to this bill) a lease or instrument in writing, in which said lease the said company did pretend to and did express, that it did then and there and thereby sell and convey to said Freeman all its personal property of every name, kind, and description in the State of Wisconsin, used in and appurtenant to the operations of the Watertown division of the La Crosse and Milwaukee railroad; and said company did therein and thereby also pretend and express that it did thereby lease and let unto said Freeman, from and after the day and year last aforesaid, for the term of one year the next ensuing, its entire railroad and railroad route from the city of Milwaukee, by way of Watertown and Columbus, to Mainland, in the county of Columbia, and commonly called and known as the Watertown division of the La Crosse and Milwaukee railroad, together with its right of way, depot grounds, and all buildings and tenements of whatever kind and description connected therewith or belonging or incident
186 thereto, which said pretended lease contains many mutual covenants between said company and said Freeman. Your orator says that he is informed and believes, and so says, that said company had no legal authority to make said lease, and that the same was made and delivered by said defendant with intent to delay, hinder, and defraud its creditors, as the said Freeman, when he received the same, to wit, on the 30th day of September, A. D. 1857, well knew.

Your orator further shows that said Freeman, immediately after the execution and delivery to him of said lease, did take possession of all the property enumerated in said lease, and ever since has and now does claim to and does receive all tolls, revenue and profits arising from the property in said lease enumerated, which is part of the property levied on by said marshal under your orator's said writ of *fieri facias* as hereinbefore stated, and that said lease (which was on the 2d day of October, A. D. 1857, recorded in the office of the secretary of state of the State of Wisconsin) and the possession and claims of right of said Freeman, under said lease, are a cloud upon your orator's right to sell said property on the writ of *fieri facias* issued in his favor as aforesaid, and an impediment in the way of the execution of said writ.

Your orator further shows that heretofore, to wit, on the 2d day of October, A. D. 1857, while the trial of the issues joined in the action in which your orator recovered the said judgment hereinbefore mentioned was proceeding in said court, and after it had become apparent that your orator would recover a large sum of money in said action, the said The La Crosse & Milwaukee Railroad Company,
187 defendant, intending and designing to cheat and defraud your orator as a creditor of said company, defendant, and to prevent your orator from collecting any judgment he might receive in said action, and to delay, hinder, put off, cheat, and defraud the creditors of said company, defendant did, to wit, at the city of Milwaukee, in the said district, suffer a judgment to pass against it, said company, defendant, by confession, in the said district court of the United States for the said district of Wisconsin, in favor of said Selah Chamberlain, without service of process or suit brought for the sum of six hundred

twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs, in all for the sum of six hundred twenty-nine thousand one hundred and five dollars and twenty-two cents, which said judgment, fraudulently suffered as aforesaid, was duly and regularly entered and docketed in said court on the day and year last aforesaid, and appears and seems to be a lien and incumbrance upon all the real property of the said defendant company within the said district of Wisconsin, including the real property hereinbefore described and levied upon as aforesaid.

Your orator further shows that he is informed and believes, and thereupon he says, that the said company, defendant, when it so suffered said judgment to pass by confession in favor of said Chamberlain as aforesaid, was not indebted to said Chamberlain in the sum dsescribed and specified in said confession of judgment; and did not owe nor was indebted to said Chamberlain in a sum exceeding the sum of fifty thousand dollars; and that no consideration or
188 value was received by or at any time accrued to said company, defendant, for said judgment above and beyond the sum of fifty thousand dollars; and that said judgment was, by said company, defendant, suffered and permitted to pass and to be entered and docketed as aforesaid, with the interest thereby, to hinder, delay, defraud, and put off the creditors of said company, defendant, and particularly to hinder, delay, and defraud your orator, by the pretence that said judgment was good and valid lien upon all the real property of the said defendant, company, in said district; and your orator is informed and believes, and therefore says, that the said Chamberlain, when he so received the said lease, and when said judgment was entered up and docketed in his favor aforesaid, well knew that said company designed and intended thereby respectively to hinder, delay, cheat, and defraud its creditors, and particularly your orator; that said Selah so intended, when he received said lease and said confession of judgment respectively, to thereby respectively injure, defraud, and delay your orator; and that the said Selah has sued out writ of *fieri facias* on said judgment in his favor, and is now threatening to sell, under the same, the railroad iron levied on by your orator as aforesaid, of grant, value, to wit, of the value of four hundred and twenty thousand dollars.

Your orator further shows that on or about the 15th day of June, A. D. 1856, the said company, defendant, was the sole owner and seized in fee of each and every of the said lots of land, city lots in the city of Milwaukee, in said district, hereinafter particularly described,
and on which said marshal has levied your orator's writ of
189 *fieri facias* as hereinbefore set forth, and that said lands were then and there of great value, to wit, the value of one hundred thousand dollars and upwards; and that Byron Kilbourn, Moses Kneeland, and James Ludington were three of the directors of said company, defendant, on the day and year last aforesaid; and that on or about the day and year last aforesaid, while said company, defendant, was so seized of said land, the said Moses Kneeland and James Ludington were appointed by the board of directors of said

company, defendant, or by the executive committee of said board, (which said board was composed of the said Kilbourn, said Kneeland, said Ludington, and others.) a committee to sell and dispose of said lands, worth at that time to the said company (as the said Kneeland, Kilbourn, and said Ludington then well knew) more than one hundred thousand dollars; and your orator is informed and believes, and therefore says, that the said Kneeland and said Ludington, then and there designing and intending to injure and defraud said company and its creditors, and disregarding their duty as directors as aforesaid in the premises, and intending unlawfully and fraudulently to acquire to themselves and the said Kilbourn, by a violation of their duty as directors as aforesaid, the said lands for a grossly inadequate price, did sell and transfer said lands, worth, as they then and there well knew, more than one hundred thousand dollars, to Charles D. Nash for the nominal consideration of twenty thousand dollars in bonds or stock of said company, defendant, but that
190 said Kilbourn, said Kneeland, and said Ludington, or any of them, furnished to said Nash, directly or indirectly, whatever the said Nash pretended to pay to said company for said lands; and that said sale was made to said Nash, with fraudulent secret arrangement and understanding between said Nash and said Kilbourn, said Kneeland and said Ludington, or one of them, that said Nash should thereafter, when requested by said Kilbourn, Kneeland, or Ludington, convey and transfer said lands to said Kneeland, said Kilbourn, or said Ludington, for the benefit of said Kilbourn, Kneeland, and Ludington, for a nominal or no consideration; and that said Nash was wholly disinterested in said pretended sale to him of said land; and that soon after the conveyance of said lands to said Nash, that the said Nash did, in pursuance of said fraudulent and corrupt arrangement hereinbefore stated, convey and transfer said lands to said Kneeland, for no consideration or a nominal or pretended consideration; that said Kneeland, soon after the conveyance aforesaid to him, conveyed and transferred to said Ludington one-third of said land, for no consideration, or for a nominal and pretended consideration, but really in pursuance of said corrupt agreement; and that said Kneeland now holds a record title to two-thirds of said land for himself and the said Kilbourn; that said Kneeland, said Kilbourn, and said Ludington pretended to hold these lands as aforesaid, which are now worth more than two hundred thousand dollars, in fraud
191 of your orator's rights as a creditor of said company, and by reason of a violation of their duty as directors as aforesaid, and trustees of this same property, and that the same ought to be applied to the payment of your orator's said judgment.

Exhibit No. 18.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district of Wisconsin, on the

first Monday (being the third day) of January, A. D. 1859. Present: the honorable Andrew G. Miller, judge of said court, presiding.

On the twenty-first day of the said term, to wit, on the eleventh day of February, A. D. 1859, the following proceedings were had, to wit:

NEWCOMB CLEVELAND *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, BYRON KILBOURN, MOSES KNEELAND, JAMES LUDINGTON, D. C. FREEMAN and SELAH CHAMBERLAIN.	In equity.

This day came the parties by their counsel, and on due consideration of the pleadings, proofs, and arguments of counsel, it is
192 thereupon ordered, adjudged, and decreed by the court, that the article of agreement between the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, bearing date the twenty-sixth day of September, eighteen hundred and fifty-seven, whereby said company sold and assigned to said Chamberlain all its personal property, (except such as is used on the Milwaukee and Watertown division of said railroad,) and leased to said Chamberlain their said railroad and appurtenances, rights, franchises, and privileges be, and hereby is, vacated, annulled, and made void, so that the same shall not hereafter be of any force or effect whatever.

And that the said Selah Chamberlain be, and hereby is, perpetually enjoined and restrained from using, managing, running, controlling, or medling with said railroad, or the rolling stock, personal property, or any of its appurtenances or franchises, or anything connected therewith, under or by virtue of said article of agreement.

And it is further ordered, adjudged and decreed by the court, that the judgment of the said Selah Chamberlain against the La Crosse and Milwaukee Railroad Company, entered in this court on the second day of October, eighteen hundred and fifty-seven, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents, and all executions and proceedings thereon be, and hereby are, vacated, annulled, made void, and set aside, so that the same shall have no further effect whatever.

And it is further ordered, adjudged, and decreed by the court, that the said defendant, Selah Chamberlain, pay the costs to be
193 taxed, so far as they accrued in this proceeding against him; and that he pay the same within twenty days, or in default thereof an execution be issued against him for the same.

And as the lease and assignment of the said company to D. C. Freeman has expired by its own limitation, it is further ordered, adjudged, and decreed by the court, that the defendant, D. C. Freeman, pay the costs to be taxed, so far as they accrued in this proceeding against him, within twenty days, or in default thereof an execution be issued against him for the same.

And it is further ordered, adjudged, and decreed by the court, that the La Crosse and Milwaukee Railroad Company pay the costs to be

taxed, so far as they accrued in this proceeding against it, within twenty days, or in default thereof an execution be issued against it for the same.

And it is further ordered that reference be, and hereby is, made to a master of this court, to ascertain and report the annual income of the several lots described in the bill, as having been conveyed to Moses Kneeland and James Ludington from the time of their said purchase, together with a statement of the interest thereon ; and also to ascertain and report the amount of actual cost of permament improvements made on said lots by said Kneeland and Ludington, together with interest thereon ; and also the amount of liens and taxes on said lots that have been paid by said Kneeland and Ludington, or by C. D. Nash for them, together with interest for the same, and that this bill be returned for further decree and proceedings after the coming in of the said report.

It is ordered by the court that in case of appeal by the La
194 Crosse and Milwaukee Railroad Company and Selah Chamberlain, or either of them, a bond to authorize a supercedeas shall be given, and filed with sufficient sureties, to be approved by court or judge, in the penal sum of one hundred and fifty thousand dollars.

A. G. MILLER.

Answer of Mil. and Minn. R. R. Co.

Same day (July 18th, 1863) answer to the attack on the organization of the Milwaukee and Minnesota Railroad Company filed as follows :

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON and JAMES T. SOUTTER, trustees, *vs.* THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY *et al.* } In equity.

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, says that he is a director of the Milwaukee and Minnesota Railroad Company, one of the defendants in this cause.

This affiant further says, on information and belief, that in the year A. D. 1859, prior to the foreclosure of the Barnes, or third mortgage so called, one Newcomb Cleveland commenced in the circuit court of Columbia county, in the State of Wisconsin, an action against
195 said William Barnes and the La Crosse and Milwaukee Railroad Company to enjoin said foreclosure, and that in said action many affidavits were taken and served, a copy of which, in printed pamphlet, is hereto attached and marked Exhibit No. 1 ; and that there is now pending in this court in equity a certain bill of complaint in favor of Henry T. Nazro against the Milwaukee and Minnesota Railroad Company and others, in which affidavits have been duly taken and filed, copies of which are hereto attached and marked Exhibits Nos. 2, 3, 4, 5 and 6 ; and this affiant further says that he is

informed and believes that all of said affidavits are substantially correct and true.

This affiant further says that there is now pending in this court in equity a certain bill in equity in favor of one Howard against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, and that said Chamberlain answered said bill and filed said answer on oath June 18, 1860, in which answer said Chamberlain, after setting forth the said mortgages or trust deeds to said Barnes, known as the third mortgage, answering on oath, says: "This defendant further says that said two instruments of deeds of trust or mortgage, construed and taken together as an entire security, have been commonly known as the third sinking fund mortgage of the La Crosse and Milwaukee Railroad Company; that afterward arrears of interest upon bonds secured by said third sinking fund mortgage remaining due and unpaid, the said William Barnes, in pursuance of power and authority in the said third sinking fund mortgage contained, proceeded to advertise for sale all the property and premises in said sinking fund mortgage described and conveyed, and such proceedings were had that on or about the 24th day of May, A. D. 1859,
196 all and singular the property, premises, and effects mentioned and described in said third sinking fund mortgage were sold as for default in the conditions of said mortgage, and in pursuance of the laws of the State of Wisconsin bidden in by said William Barnes, trustee, for the use, benefit, and behoof of the holders of bonds secured by said mortgage, for about the sum of one and one-half million of dollars; and that thereupon, and on or about the 26th day of May aforesaid, and in pursuance of the laws of Wisconsin, a new company, or corporation composed of the holders of bonds for whose benefit said property, premises, franchises, and effects were bidden in as aforesaid, was created and formed by the name and style of the Milwaukee and Minnesota Railroad Company, which thereby succeeded to all rights of property, privileges, franchises and effects of the La Crosse and Milwaukee Railroad Company, freed and discharged of all liens and incumbrances created or suffered by the La Crosse and Milwaukee Railroad Company subsequent to the said 24th day of May, and freed and discharged of all liens and incumbrances prior thereto, and created or suffered subsequent to the said 21 day of June, 1858, subject only to the right of redemption in those parties whose liens and incumbrances might have accrued in the interval between said 21 June, 1858, and 24 May, 1859, and the defendant prays the same advantage of the matters and things last aforesaid as though he had pleaded the same."

This affiant further says that in said answer last aforesaid the said Chamberlain, on oath, says: "He admits that he" (the said Chamberlain) "did, under said instrument of mortgage,"
197 (meaning the said lease from said La Crosse and Milwaukee Railroad Company to said Chamberlain,) "enter into possession of said railroad, and that he has, since the first day of October, 1857, and until the 18th day of May, 1860, been in receipt of the earnings of said road."

We stipulate that this paper shall have the same effect as though the affidavit was duly signed and sworn to, and hereby waive it.

N. J EMMONS, *Solicitor.*
JAMES S. BROWN,
For compl't, of counsel in dis'ct court.

198 *Exhibit No.* 1.

Circuit court for Columbia county.

NEWCOMB CLEVELAND, plaintiff,
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others, defendants.

STATE OF WISCONSIN,
County of Milwaukee, ss:

John P. McGregor and Wm. E. Smith, being severally duly sworn, depose and say, and each for himself says, that they are directors of the La Crosse and Milwaukee Railroad Company, and have been so ever since the 26th day of May, 1858, and that neither of them ever was an officer of the said company prior to that time; that they took part in, and were privy to, the action of the board of directors of the said company, in providing for the issue of two millions of dollars of bonds of said company, commonly called third mortgage sinking fund bonds, and of the mortgage to Wm. Barnes, to secure the same mentioned in the said complaint; that they heard the project of issuing the said bonds, and of executing the said mortgage, discussed in and by said board of directors; that as to themselves, each of them knows, and as to the other directors they believe, that the said bonds were issued and the said mortgage executed for the *bona fide* purpose of paying the floating debt, and unsecured *bona fide* debt due by the said company, and of protecting the obligations of the said company to the stockholders, commonly called the farm mortgage stockholders; that copies of the resolutions of the said board of directors in that behalf are hereto annexed, marked A, and
199 are a true statement of the objects of these deponents, and, as they believe, of the other directors, in the issue of the said bonds, and the execution of the said mortgage; that everything heard or known by these deponents at, before, and after the time of the execution of the said mortgage, and of the supplement thereto, said or done by the board of directors, satisfied these deponents, and now satisfies them, that the said mortgage was given, and the said bonds issued for that purpose, avowed in the said resolutions, and for no other purposes; and these deponents deny that at the time of the execution of the said mortgage and supplement the said company was destitute of resources or their present means, or that there was then no probability for three years then next ensuing to take possession of said railroad, or that it would be in possession of any

funds to pay interest on bonds or other debts, or that the credit of the said company was so prostrate that bonds or other evidence of indebtedness against said company could be used only for a nominal sum or rate; and they deny for themselves, and on their information and belief for the other directors, that the statements in that behalf in the complaint were known to the directors, or believed by them or any of them; and these deponents deny each for himself, and on their information and belief deny for the other directors of the said company, that they combined or confederated together to defraud or cheat the stockholders of the said company, or to abuse or betray the trust reposed in them as directors, or to extinguish the existence of the said company, or to change the ownership of the railroad or franchises of the said company from the stockholders thereof to themselves, or to any one else, or did fraudulently pass the said resolution; that the averments in the said complaint are, as to these deponents gratuitously false, and that these deponents do not believe that the said plaintiff was ever so informed or so believes; and that these deponents, upon their information and belief, state that they believe the said last-mentioned averments in regard to the other directors to be in like manner gratuitously false; and that, so far as the action of the board of directors is concerned, they know such averments to be false, and as far as they had or have knowledge of the private view of the other directors, such averments are false.

These deponents further severally say that they became directors of the railroad company with great reluctance, and by solicitation of stockholders of said company, to their own great inconvenience and loss, and in their action as such directors have acted, to the best of their judgment and ability, for the best interest of the stockholders and creditors of said road, and of all persons interested therein, and of the public interest therein, and that they believe that the action of the said board of directors since these deponents became directors has been the same; that when the directors elected with
200 these deponents came into the control of said company, they found it embarrassed by a large secured and unsecured debt; that at the meeting of the stockholders which elected these deponents, as aforesaid, it was suggested by many stockholders that such a mortgage should be made as the only means of relieving the said company from its floating debt and unsecured obligations, upon which default had been made; and that the said board of directors, for such purposes, and for the express purpose of saving the rights and property of the said company from actual sacrifice and extinguishment by a vast accumulation of judgments against it, determined to execute the said mortgage, and issue the said bonds, to be used in compromising and retiring farm mortgages and unsecured indebtedness of the said company, which would not increase, but would diminish the debt of the said company; that the mortgage debt of the said company would then be about eight million of dollars, and that it was expected that an early opening of the road through to La Crosse would greatly increase the earnings of the road, and that the governor of the State could be induced to give his certificate for the third

twenty miles of land-grant road completed, and withdraw his objections to the certificate of forty miles completed, given by his predecessor in office, would tend greatly to increase the resources and raise the credit of the said company, and that the said company would thus be enabled to save its railroad and franchises; that such were the views of these deponents, and such they verily believe were the views of the other directors in giving the said mortgage, and that these deponents, and, as they verily believe, the other directors, faithfully endeavored to carry these views.

And these deponents further severally say that various circumstances over which the said board of directors had no control, and chiefly the refusal of the governor to take such action as would give the said railroad company a direct title to the land, which the company claimed for the construction of sixty miles of land grant road, amounting to about two hundred and thirty thousand acres of land, defeated the policy of the said board of directors in that behalf.

These deponents further say that the interest on four millions of dollars of land-grant bonds, so-called, of the said company, became due in August, 1858, and that in order to maintain the credit of the said company, an arrangement was made by the board of directors with capitalists to advance the amount of net interest, amounting to one hundred and forty thousand dollars, on a pledge for one year of double the amount of said third mortgage bonds, which arrangement was defeated by the publication of a letter of the governor to the president of the said company, published in divers newspapers, refusing to withdraw his objections to the company's obtaining the title to the lands aforesaid.

201 And these deponents further say that afterwards another plan of maintaining the rights of the said company was matured by the said board of directors in substance as follows: that Selah Chamberlain should pay the interest on the said third mortgage bonds until January, 1861, and should pay a sufficient amount to defray the necessary expenses of the organization of the said company, the said company undertaking to pay the interest on the said land-grant bonds and the said third mortgage bonds; that a full understanding to that effect was come to with the said Chamberlain, but that he afterwards refused to comply with the same.

And these deponents further severally say, for themselves, and for the rest of the board of directors they say, on their information and belief, that the whole policy of the said board, of which the said third mortgage formed a part, was for the best interest of the said company and its stockholders, and was faithfully attempted to be carried out by the said directors.

And these deponents further severally say, each for himself, that it is utterly false, and as to the other directors they believe it to be false, that the change in the terms of the said third mortgage bonds was intended to effect a change in the ownership of the said road and franchises, or the sooner to wipe out or extinguish the stock of the said company, or to hasten the accomplishment of the fraudulent design of the directors falsely alleged in that behalf in the said com-

plaint ; but these deponents for themselves severally say, and for the other directors say, upon their information and belief, that such change in the said bonds, and the change in the mortgage securing the same, was made for the purpose of making the said bonds better security and more easily to be negotiated; and that after such change in said bonds was made, great efforts were made to induce the creditors of the said road, and other persons with whom the said bonds were used, to take the same without the coupons for three and four payments of interest.

And these deponents further severally say for themselves, that it is false, and for the other directors and the defendant, William Barnes, they say that they believe it to be false, that the said mortgage, or the said supplement thereto, was delivered by the said company or accepted by the said Barnes without any design, intention or expectation of the said company, or its officers, to sell, use or dispose of the bonds to be issued thereunder for any reasonable price, or for anything like the nominal or fair value thereof, or without any design or intention whatever on the part of the said company, or its officers or directors, ever to pay such bonds or any interest thereon ; and in like manner they say that it is false that the said mortgage, or the said supplement thereto, or the bonds issued thereunder, were
202 made, executed, delivered or issued for the purpose or with the intention or design of suffering a foreclosure of the said mortgages as soon as the first coupons, or the first instalment of interest on such bonds should become due, or with the intention of selling out the property and franchises of the said company by virtue of the power of sale in the said mortgage, as soon as such first instalment of interest should become due, or by means of such sale forever cut off or destroy the right, title or interest of the said plaintiff, or of any other stockholder, in the said company.

And these deponents further severally say that at the time of the execution of the said third mortgage, the prior mortgage debt of the company was a little upwards of six millions of dollars ; that with that debt, construction of the road from Milwaukee to La Crosse was secured within the current year ; that four millions of such mortgage debt was selling at prices fluctuating from thirty to thirty-five per cent.; that with the portion of the land grant claimed to have been earned by the said company, it was expected by these deponents, and, as they believe, by the other directors, that one-half of said four millions of indebtedness could be extinguished, leaving a mortgage debt on the entire road not exceeding about four millions of dollars, and with the said third mortgage not exceeding about six millions of dollars ; that thereupon the bonds to be issued under the said third mortgage would be a fair security and could be used to pay and compromise judgments and floating debt, unsecured bonds and contracts given to farm mortgage stockholders, to raise money to pay interest and to settle and compromise the claim of Selah Chamberlain, repossess the said company with their railroad, the earnings of which would then enable the said company at an early period to

pay the interest upon their whole debt and save something for the stockholders of said company.

And these deponents further severally say, that they deny five hundred and fifty thousand dollars of the said third mortgage bonds are held by Stoddard Judd, in trust for the said company ; but these deponents say that five hundred and fifty thousand dollars of the said bonds were assigned to the said Stoddard Judd, for the purposes and upon the trusts set forth in a contract, whereof a copy is hereunto annexed, marked B, and that the time for executing such trust has been extended by resolution of the board of directors to the first day of May, 1860, as these deponents are advised and believe.

And these deponents further severally say that the stockholders of the said company, known as farm mortgage stockholders, hold the contract of the said company, in writing, in substance not to demand interest on the bonds and mortgages of such stockholders ;
203 and in case of the transfer of such bonds and mortgages, to indemnify such stockholders against the payment of such interest ; that the said company has failed to keep down the interest on such obligations of the said farm mortgage stockholders, and that it has been the policy of the board of directors, of which these deponents are two, to indemnify such farm mortgage stockholders for the breach of the contract of the said company with them, which was finally carried out by the said contract with the said Stoddard Judd, which these deponents believe to be just ; and these deponents are informed and believe that before the commencement of this action the said Stoddard had used a portion of the bonds so assigned to him in the execution of the trusts of the said assignment, and held the balance thereof subject to the execution of the same.

And these deponents further severally say that they have no personal knowledge of any transactions of the president of the said company in borrowing money upon pledges of the said bonds, but they are informed and believe that N. P. Stanton, president of the said company, has borrowed money upon pledge of the said bonds, at the rate of five cents upon the dollar, to meet the pressing exigencies of the said company, and that with the money thereby raised he saved property of and used by the said company from sale upon foreclosure and forfeiture by breach of contract to the amount of fully or near one hundred and fifty thousand dollars, including a part of the depot property of the said company in the city of Milwaukee, and eighteen acres of land in said city, whereon are the large and valuable round house, machine-shops, and other buildings of the said company ; these deponents are informed and believe that the value of the property so saved was greater than the nominal amount of the bonds so hypothecated, and far greater than any real value of the bonds at said time ; but these deponents were not personally parties to or responsible for such hypothecation.

And these deponents further severally say that it is not true that the officers or agents of the said company have in no instance sold any of said third mortgage bonds at rates above five cents upon the

dollar ; that these deponents severally know of the disposal of large amounts of said bonds at par, and are informed and believe that about or nearly one-half of the said third mortgage bonds were paid to bona fide creditors of the said company in payment of their debts, at rates nearly averaging par, and by far the greater part thereof at par.

And this deponent, William E. Smith, for himself says, that he was present at West Bend, in the county of Washington, in this State, on the 7th and 8th days of April last, at the showing of cause before A. Scott Sloan, judge of the circuit court for the county of Dodge, why an injunction of the same tenor as the one issued in this action should not issue in a certain action wherein George Morgan,
204 Eli Morgan, John Converse, Lewis Brown, Jesse G. Southwell and Edwin Townsend were plaintiffs, and the La Crosse and Milwaukee Railroad Company, Wm. Barnes, Nehemiah P. Stanton, George W. Luther, Wm. E. Smith, John P. McGregor, A. C. Gunnison, Alfred Noxon, Wm. Platt, Wm. A. Guest, Alexander Mitchell, Eliphalet Cramer, Henry Williams, Cyrus Hawley, Charles Schley, Jno. Rockwell, Edward H. Brodhead, Anson Eldred, Stoddard Judd, Samuel L. Rose, Daniel Jones, Stephen H. Alden, were defendants ; that deponent heard read the complaint in that action, and that the same is of the same general scope of the complaint in this action, and prays for the same relief ; that at the said showing of cause, proof was made by the defendants, and not denied on the part of the plaintiff, that a large amount of the said third mortgage bonds had been disposed of by the said company at par, in payment of bona fide debts due by the said company ; that Wm. P. Lynde, esq., one of the attorneys of the plaintiff in this action, was present at the said showing of cause, as counsel for the plaintiffs in that action, heard the said proof so given, made an argument before the said judge thereupon, and did not deny or pretend to deny the truth of the said proof so given.

And these deponents severally say that they have reason to believe, and do believe, that such proof, or the facts thereby disclosed as herein above stated by the said Wm. E. Smith, were known by the said plaintiff before and at the time of the commencement of this suit.

And this deponent, John P. McGregor, for himself says, that no person holds any of the said third mortgage bonds in trust for him or his use; that he holds and owns two thousand dollars of said bonds, and no more, which two thousand dollars he received in payment of Watertown consolidation bonds of the said company, amounting to two thousand dollars, which this deponent held and owned long before he was a director of the said company, and which constituted a bona fide debt of the said company; that this deponent was a stockholder in the Watertown Railroad Company at the time of the consolidation with the La Crosse and Milwaukee Railroad Company, and received for his said Watertown stock the above-mentioned consolidation bonds, and two shares of the stock of the La Crosse and Milwaukee Railroad Company, which is all the stock of the said last-

mentioned company ever owned by this deponent, and which he still owns; that this deponent made the statements above contained in this paragraph in an affidavit of these deponents, to be used in showing the cause above mentioned; that the consolidation above mentioned took place in 1856, and that the same and the date thereof are notorious facts amongst persons interested in said La Crosse and Milwaukee Railroad Company; and that deponent never owned
205 or had any interest, direct or indirect, in the said third mortgage bonds, except as herein above stated.

And this deponent, Wm. E. Smith, for himself says, that no person holds any of said mortgage bonds in trust for him, or for his use, and that he himself does not hold or own any of said bonds, and never owned any; and that he was one of the original stockholders, being one of the earliest subscribers to the stock of the said La Crosse Railroad Company, and has ever since owned, and does now own and hold his said stock.

And these deponents severally say further, and each for himself says, that he never at any time acquired or held any amount of the stock of the said railroad company for the purpose of rendering him eligible as a director.

And this deponent, Wm. E. Smith, for himself says, that the statements contained in the two last paragraphs of this affiant were made in an affidavit of these deponents, used in showing cause at the time and place and in the action above mentioned; and that the statement which the said John P. McGregor above states that he made at that time, and the statements in the two last paragraphs of this affidavit, were read and commented upon on the said showing of cause.

And these deponents severally say, and each for himself says, that they believe that in the circumstances hereinbefore stated, the said third mortgage bonds never have been, and are not as good security, nor have they, to the information and belief of these deponents, ever had a fixed market value; that in the neighborhood of one million of dollars of bona fide indebtedness of the said company, besides the then liabilities to the farm mortgage stockholders, have been paid and satisfied by the said third mortgage bonds, which is a much greater amount than the whole issue thereof ever has been, or is worth, or likely to be worth, if held valid, in the belief of these deponents; and that the said farm mortgage stock amounts to about one million and eighty-seven thousand dollars.

And this deponent, Wm. E. Smith, for himself says, that he was not a director of the said company at the same time with Moses Kneeland or Stephen H. Alden; that Moses Kneeland was not a director of the said company in March, April, or May, 1859; that this deponent was not a director of said company before the 26th day of May, 1858; that Alfred Noxon and A. C. Gunnison were not elected directors at the election which took place on the 26th day of May, 1858, but were subsequently chosen to fill vacancies in the board; that this deponent never advocated to the said Kneeland, or to any other person, or heard any one else to advocate the issue of bonds and a mortgage of any kind, for the purpose of wiping out the stock and

floating debt of the said company, or of suffering the same to
206 be foreclosed; nor did deponent ever say anything to the said Moses Keeland, or to any one else, or hear any one else say anything to give any countenance to any such ideas as stated in that behalf in the affidavit of the said Moses Kneeland, annexed to the copy of the complaint in this action, or to warrant any suspicion or idea that the said third mortgage, or any other mortgage, was to be made without expectation of being paid, and that if the statements in that behalf in the said affidavit of the said Moses Kneeland are meant to assert or imply that this deponent ever made such statements, or entertained such views, or ever made any statement warranting a suspicion to that effect, or ever heard N. P. Stanton, George W. Luther, Alfred Noxon, or A. C. Gunnison, or Jacob H. Shear, or any other person make such statements, the said affidavit of the said Moses Kneeland is in that behalf utterly and gratuitously false.

And these deponents severally say, and each for himself says, that he has not been served with a copy of the summons or complaint, or any other paper in this cause, and that they are informed and believe that no just service has been made upon any of the defendants in this cause, except William Barnes; and these deponents say, each for himself, that he has been within this State following his ordinary business ever since the commencement of this suit, and that they are informed and believe that the defendants, Alexander Mitchell, Eliphalet Cramer, Henry Williams, Cyrus Hawley, Charles Schley, Jno. S. Rockwell, Anson Eldred, Stoddard Judd, Samuel L. Rose, Zelotus A. Cotton, Daniel Jones, Russell Sage, M. L. Sayles, R. S. Kneeland, H. J. Nazro, John Nazro, B. W. Clark, Wm. J. Dawes, J. T. Lewis, Garret Vliet, D. McDonald, William E. Cramer, C. A. Austin, C. D. Nash, H. Ludington, E. D. Baker, William Allen, George Allen, Samuel Brown, Joseph Cary, A. F. Suelflohn, Barton Crandall, Jones Eaton, Leander Comstock, A. B. Van Cott, C. A. Sprague, N. B. Caswell, G. D. Norris, G. D. Butterfield, L. A. Cole, W. H. Clark, James Cady, S. Barnett, W. G. Gardner, W. G. Sterling, S. B. Scott, Wm. Griswold, E. D. Holton, Edward Porter, H. Tompkins, and John H. Tweedy, defendants in this action, are most of them residents of this State, continually within this State since the commencement of this suit, and all of them having been within the State and subject to service of papers in this cause since the commencement thereof.

And this deponent, W. E. Smith, for himself says, that in showing cause at West Bend as aforesaid, he heard read the affidavit of Edward P. Whaling, stating the disposition of third mortgage bonds, and that Wm. P. Lynde, esq., claimed in the argument to have footed up the amount of bonds accounted for in the said affidavit; and that there were affidavits used on the said showing of cause, ac-
207 counting for the disposition at par of a large amount of said bonds besides those mentioned in the said affidavit of the said Whaling.

JOHN P. McGREGOR.
WM. E. SMITH.

Subscribed and sworn to before me this 12th day of May, A. D. 1859.

JAS. G. JENKINS,
Notary Public, Milwaukee Co., Wis.

Document A.

Whereas a large floating debt has accumulated for rolling stock and materials furnished and provided, and labor performed for the La Crosse & Milwaukee Railroad Company, which remains unpaid and is unsecured by any mortgage or other security upon the road or other property of said company; and whereas a large number of persons along the line of the road in Wisconsin have mortgaged their farms to the company to aid in the construction, which farm mortgages have been used by the company with the stipulation on its part to pay the interest accruing thereon, and a failure to pay which interest would produce great distress among the farm mortgage stockholders; and whereas it is necessary that immediate provision be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages, and the other just indebtedness of the company, and also to provide for taking up and cancelling said farm mortgages when deemed expedient: therefore,

Resolved, That an issue of bonds of the said company be, and is hereby, authorized to the amount of two million dollars, ($2,000,000,) to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all depot grounds, lots, buildings, stations, materials, line track improvements of every kind, all rolling stock, cars, locomotives. and all real and personal property appertaining to the said line of railroad, said bonds to be in the sums following: one thousand (1,000) bonds in sums of five hundred dollars each, and fifteen hundred (1,500) bonds in sums of one thousand dollars each, payable in thirty years from date, bearing interest at the rate of seven per cent. per annum from the first day of July, 1858, payable semi-annually after one year at the Albany Exchange Bank, in the city of Albany, the first payment of interest to be made on the first day of July, 1859; said bonds to be printed in the usual form with coupons, and the mortgage securing the same to be executed by the president and secretary of said company to William Gould, of the city of Albany, trustee for said bondholders, and providing, in case of death, resignation, or removal of said trustee, for the appoint-
208 ment of a successor on application to one of the justices of the supreme court of the State of New York; also a sinking fund to be provided for the gradual payment of said bonds, viz: the sum of twenty-five thousand dollars ($25,000) annually, the first payment to be made on the first day of July, 1861. Said trustee shall for the payment of the sinking fund advertise for the purchase of said bonds by ten days' notice in New York, Albany, and Milwaukee newspapers; said mortgage so to be executed subject to nine hundred and twenty-two thousand dollars ($922,000) in outstanding bonds secured by a first

mortgage upon the eastern division; also to Milwaukee city bonds, ($314,000;) also one million dollars ($1,000,000) in second mortgage, eastern division, and $4,000,000 mortgage upon the line of railroad from Portage City to La Crosse, and subject to the second mortgage on the road from Portage City to La Crosse, and from junction near the village of Tomah to the terminus on lake or river St. Croix.

OFFICE LA C. & M. R. R. Co.,
Milwaukee, April 1, 18 9.

I hereby certify that the foregoing is a true copy of a resolution passed by the board of directors of the company, in session at Milwaukee, June 1st, 1858, as appears of record in the office.
(Signed) EDWARD P. WHALING, *Sec'y.*

Resolved, That the resolutions adopted on the first day of June instant, at the office of the company, in the city of Milwaukee, authorizing and directing the issue of bonds of the said company to the amount of $2,000,000, secured by a mortgage, and the same is hereby amended as follows, said bonds to be in the sums following, viz :

$1,000,000 in sums of $1,000 each.
700,000 in sums of 500 each.
300,000 in sums of 100 each.

And that said resolution be further amended by striking out the words "payable semi-annually after one year," and also the words "the first payment of interest to be made on the 1st day of July, 1859," so that the coupons shall be due and payable semi-annually from the first day of July, 1858, which resolution was adopted unanimously.

Resolved, That John H. Ronalds, esq., counsellor-at-law, be, and he is hereby, requested to prepare said bond and mortgage and submit the same to the board of directors for their approbation previous to the execution of the same.

OFFICE LA C. & M. R. R. Co.,
Milwaukee, April 1, 1859.

I hereby certify that the foregoing is a true copy of two resolutions passed by the board of directors of this company, in
209 session, 15th June, 1858, as appears of record in this office.
(Signed) EDWARD P. WHALING, *Sec'y.*

B.

Whereas the board of directors of the La Crosse and Milwaukee Railroad Company, on the sixth day of January, 1859, adopted a resolution, of which the following is a copy:

"*Resolved*, That the president of this company be, and he is hereby, authorized and directed to assign to Stoddard Judd, of Fox Lake, Wisconsin, in trust for the uses and purposes hereinafter mentioned, third mortgage bonds to the amount of five hundred and fifty

thousand dollars, being part of the six hundred thousand dollars of said third mortgage bonds heretofore, by resolution of this board, passed October 23d, 1858, directed to be set apart to provide for the farm mortgage bonds and relieve the mortgage stockholders :

1st. The said Stoddard Judd, trustee, to deliver to any farm mortgage stockholder third mortgage bonds, in amount equal to one-half of the amount of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him, binding this company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock ; the said trustee to cancel and surrender to this company the stock and obligation of this company so surrendered by the stockholders.

2d. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in said trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd in trust, that shall not be used for the above first-mentioned purpose by the first day of May, 1859. And it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust, and the terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves of the provisions for their relief and benefit intended to be made by this resolution, and the assignment to be made by virtue hereof ; and this trust to be executed only in case such farm mortgage stockholders shall avail themselves of the same on or before the first day of May next."

Now, therefore, this indenture, made the fourth day of February, A. D. 1859, by and between the La Crosse and Milwaukee Railroad Company, a corporation created by and under the laws of Wisconsin, party of the first part, and Stoddard Judd, esq., of Fox Lake,
210 in the State of Wisconsin, party of the second part, witnesseth: That the said party of the first part, in consideration of the premises and one dollar to it in hand paid, does hereby sell, assign, transfer, and convey to said party of the second part third mortgage sinking fund bonds of said company to the amount of five hundred and fifty thousand dollars, ($550,000,) in trust for the uses and purposes hereinafter mentioned.

First. The said Stoddard Judd, trustee, is to deliver to a farm mortgage stockholder third mortgage bonds in amount equal to one-half of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding the company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock, the said trustee to cancel and to surrender to this company the stock and obligations of this company so surrendered by the stockholders.

Second. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd in trust that shall not be used for the above first-mentioned purpose

by the first day of May, 1859. And it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust, and terms thereof, and to use all reasonable endeavors to avail themselves of the provisions for their relief and benefit, the assignment to be made by virtue hereof; and this trust to be executed only in case of said farm mortgage stockholders who shall avail themselves of the same on or before the first day of May next. The said party of the second part hereby accepts this trust, and promises to faithfully and diligently perform the same.

In witness whereof, the said railroad company has hereunto affixed its corporate seal and caused the same to be [SEAL] subscribed by its president; and the said Stoddard Judd, party of the second part, has subscribed his name and affixed his seal.

LA CROSSE & MILWAUKEE RAILROAD COMPANY,
N. P. STANTON, *President.*
STODDARD JUDD. [SEAL.]

211 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY,
WILLIAM BARNES, and others,
against
NEWCOMB CLEVELAND.

STATE OF NEW YORK,
Albany City and County, ss:

William Barnes, of the said city and county, being duly sworn, saith that he is one of the defendants in this suit, and the trustee in the third mortgage of the La Crosse & Milwaukee Railroad Company, of which deponent believes true copies (excepting some errors in printing or otherwise) are annexed to the complaint herein.

Deponent further saith that the said trust deed or mortgage, dated June 21st, 1858, and the supplement thereto, dated August 11th, 1858, were not, as alleged in said complaint, accepted by deponent without the design, intention, or expectation that the bonds to be issued thereunder would be sold for any reasonable price, or for less than the fair value thereof, or without the design or intention that the said company would ever pay such bonds, or any interest thereon whatever, as alleged in said complaint.

This deponent further saith that the said mortgage and supplement were not accepted by deponent with the design or intention, or for the purpose, of foreclosing the same as soon as the first interest warrants or coupons should become due; but deponent saith that the said trust deed or mortgage, and the supplement thereto, were accepted by deponent in good faith, and for the purpose and as hereinafter set forth.

Deponent further saith that the said trust deed and supplement were executed, to the best of deponent's knowledge, information and belief, by said railroad company, and to deponent's positive knowledge

the same was accepted by deponent in good faith and for honest purposes, as expressed in the resolutions authorizing the execution of said trust deed, a copy of which is hereto annexed, marked Schedule A, and with the design and intention of paying off and satisfy-
212 ing the large floating debt of the said company, which had accumulated for rolling stock and materials furnished and provided, and labor performed for the said company, and paying or protecting the farm mortgage stockholders in paying the interest on the farm mortgages given by the farmers and sold by the company, and also paying and satisfying the other first indebtedness of said railroad company due and to become due, a large portion of which was unsecured by mortgage or other accounts on the said railroad, or other property or franchises of said company.

Deponent further saith that a copy of said resolution was delivered to deponent by Hon. D. V. N. Radcliffe, of the city of Albany, assistant secretary of said company, as expressive of the purposes for which said mortgages or trust deeds were executed, and as evidence of the right of the officers of said railroad company to execute the same; that deponent examined the charter of said company, and the acts amendatory thereof and supplementary thereto, and the laws of Wisconsin in reference to the powers of said company to execute such mortgage or trust deed, and found that the power and authority ample and sufficient in said corporation to execute the same, and that deponent thereupon accepted the said trust without any intention, expectation, or design of defrauding the stockholders of said railroad company or any other human being; but with the design, expectation, and intention of faithfully and honestly performing his duties to his *cestui qui trust*, and to the public generally in the premises, and that deponent has ever since been, and is still, actuated by the same purposes, and that he has discharged and intends in the future to discharge his said duties to the best of his ability.

Deponent further saith that the steps which he has taken in the performance of his duties as such trustee, as aforesaid, have been taken without the advice or connivance of the board of directors of said company, and on his own responsibility, after consultation and advice in some instances with his counsel, E. G. Ryan, esq., of Milwaukee, and a portion of the bondholders under said third mortgage.

Deponent further saith that he is informed and believes that when said mortgage or trust deed was executed, the directors of said railroad company hoped and expected to be able to procure the lands to which they claim to be entitled for the construction of sixty miles of the La Crosse land grant road; that the opinion of Hon. Greene C. Bronson and others had been procured, that the company were entitled to these lands, and it was estimated that with these lands the land grant mortgage of four millions could be reduced to one or two millions of dollars, and the third mortgage to deponent thus rendered more valuable, and of greater use and benefit in settling the debts of the company, and providing funds to ex-

tricate the company from its floating debt and other financial embarrassments.

Deponent further saith, on his information and belief, that
213 it was intimated by the board of directors of the said company that both the principal and interest of the mortgage to deponent shall be paid by the said railroad company at the maturity thereof, in the same manner as another mortgage, if it was in the power of said company to do so, and that it was confidently expected that with the completion of the road to the Mississippi river the favorable prediction and sanguine hopes of the friends of the road would be realized. Deponent further saith that he is informed and believes that an arrangement was perfected by the said company with Selah Chamberlain last fall, soon after the opening of the railroad to La Crosse, by which the said Chamberlain agreed to pay the interest coupons to become due on the third mortgage up to January 1st, 1861, as is particularly specified in the affidavit of Hon. D. V. N. Radcliffe, but which said Chamberlain subsequently refused to fulfil and consummate, for the alleged reason that he was advised by counsel that he would thereby impair or endanger his rights under his lease and judgment. Deponent further saith, on his information and belief, that no safe or available means existed or could be devised, except a trust deed, and the bonds to be issued thereunder, with or by which the directors of said company could hope to pay its large floating debt, relieve its financial embarrassments, and protect the property of said company from immediate sacrifice and loss, and prevent the speedy dissolution of said corporation and the total destruction of its charter and franchises.

Deponent further saith, on information and belief, that with the bonds issued under said third mortgage, the said railroad company have saved property of said corporation, and have cancelled or provided for the satisfaction of such debts to the amount of over one million of dollars.

Deponent further saith that he denies the allegations in said complaint, that on the first day of June, 1858, there was no human probability that the said railroad company, defendant, would be enabled, for three years next ensuing, to take possession of said railroad, and that it would be in possession of any funds whatever to pay interest on bonds and other debts, and that its credit was so utterly prostrate that its bonds and other evidences of debt could only be sold in the market for a nominal sum.

This deponent further saith that he denies, on his information and belief, the allegation in said complaint, that the directors of said railroad company combining and confederating together to cheat and defraud the stockholders of said railroad company, and craftily and wickedly designing and intending to abuse and betray the trust reposed in them as directors, and to extinguish the existence of said railroad company, and change the ownership of said railroad and its franchises from the stockholders to themselves and their confederates, well knowing the ruined credit of said company and its incapacity to pay interest within the next ensuing two years upon any bonds or

other indebtedness of said company, did fraudulently pass a
214 resolution that an issue of two millions of bonds of the said company should be authorized, secured by a mortgage upon the entire line of the railroad, as alleged in said complaint.

Deponent further saith that he saw said Cleveland in the office of said company, in the city of Milwaukee, in the month of February last, examining the books of said railroad company, and deponent believes that the secretary of said company, E. P. Whaling, esq., is not disposed to deny said Cleveland any legal rights which he may possess of access to the books of said railroad company.

Deponent further saith that he has possession of the books and office of said railroad company, in the city of Milwaukee, according to the provisions of the trust deed and supplement executed to deponent. But deponent expressly denies that he has ever refused said plaintiff access to said books, or any other person; that although deponent has repeatedly seen said Cleveland in the city of Milwaukee since the month of January last, he has never made any application to deponent to examine said books, and that only one such application has been made to deponent by any individual, which application was granted.

Deponent further saith, on his information and belief, that the resolution of June 1st, 1858, was not the only resolution legally passed by said board authorizing the issue of bonds secured by trust deed or mortgage, as therein set forth, and was not the only resolution passed by said board in the State of Wisconsin, or at any legally assembled meeting of said board; that said board could hold and did hold legal and valid meetings at the city of Albany and New York, in the State of New York, and also that the proceedings of said board of directors in the city of Albany, amending the said resolution of June 1, 1858, were valid and legal, and that said proceedings and the execution of said trust deed and supplement to deponent were also subsequently approved, ratified and confirmed by said board at a meeting of said board in the State of Wisconsin, in the month of October, 1858, that the only object and design of altering the time when the first interest warrants or coupons should become due from July 1, 1859, to January 1, 1859, was to render said bonds available and acceptable in funding the interest on the land grant bonds which became due in August, 1858, and in the payment of other floating debts of said company.

This deponent saith that the allegation in said complaint that five hundred and fifty thousand dollars of said third mortgage sinking fund bonds are in the hands of Dr. Stoddard Judd merely in trust for the said railroad company, that said bonds have never been used or issued by said railroad company, is untrue in point of fact; deponent saith that said bonds were assigned by said company to said Judd in trust to deliver the same to the farm mortgagors of said railroad company, to the amount of fifty per cent. of the principal of their mortgages, on the said mortgagors surrendering the agreement of said railroad company to pay interest on their mortgages, &c., and

215 their stock certificates, according to the terms expressed in the assignment of said bonds to said Judd by the La Crosse & Milwaukee Railroad Company, except that the time within which the said mortgagors may receive the said bonds, and avail themselves of the benefit of the said trust, was on the eighth day of March, 1859, extended by said railroad company to the first day of May, A. D. 1860.

This deponent denies, on information and belief, the allegations in said complaint, that the said defendant Stanton has in repeated or any instances borrowed, or offered to borrow, money, for the use of said company, by pledging and offering to pledge, as security therefor, the said third mortgage bonds, at the rate of 5 cents on the dollar, with the understanding that such bonds should not be redeemed, but should become forfeited to the lenders of the money, as alleged in said complaint.

This deponent denies, on his information and belief, the allegations in said complaint, that in no instance have said bonds been pledged at a rate higher than five cents on a dollar.

This deponent further saith that he denies that he is largely interested as the pretended owner and holder of said third mortgage bonds, either in his own name or in the name of others in secret trust for him; and he also denies that in proceeding to sell said railroad property and franchises he is acting in collusion with other holders of said bonds, or any other person or persons, to effect any fraudulent or illegal purpose, and that deponent is therein countenanced and aided by the officers and directors of said company.

Deponent further saith that he is the absolute owner of only ten thousand dollars of the said third mortgage bonds which deponent received from said company on account of his services as trustee; that the charges for deponent's services were payable and should have been paid by said company in cash; that this deponent desired and endeavored to obtain such payment in cash, and sent in a bill to said company for this purpose, but was unabled to obtain payment therefor in money, and was compelled to take third mortgage bonds or nothing; that the greater value of said ten thousand dollars in third mortgage bonds was not half the amount due and owing by said railroad company to this deponent.

Deponent further saith that he never received any other of said third mortgage bonds of said company, and none are held in trust for him in any manner whatever.

Deponent further saith that he has a contingent interest depending on payment in twenty thousand dollars of said third mortgage bonds, acquired by purchase of third persons, other than the directors and officers or agents of said railroad company; and this deponent has not, and never had, any other interest in any of the bonds issued under said third mortgage, either in his own name or in the name of any other person. That deponent considers, and is advised, that he has a right to purchase or become interested in said third mort-
216 gage bonds, and that deponent's private interests will not

thereby come in conflict with *on* duties as trustee, but, on the contrary, will harmonize and be consistent therewith.

Deponent further saith that by the said trust deed or mortgage to deponent it is provided and covenanted, on the part of said railroad company with deponent, in the same terms as in the land grant mortgage to Hon. Greene C. Bronson and others, that the said railroad company would from time to time pay all cost, charges, expenses and compensation of the trustee, in, about, or for the execution of the trust, and the said company would in all things keep deponent harmless of, and from, and against all damages, cost and charges and expenses which deponent might sustain or be put to, in consequence of accepting such trust, or of anything which might be done or omitted under such deed of trust, saving only such damages as might arise from the culpable act or neglect of deponent as trustee. Deponent further saith, that notwithstanding said covenant in said deed, and although deponent has repeatedly requested it, the said railroad company have never complied with the said agreement, and deponent is compelled to look to the bondholders for such payment and indemnity. Deponent further saith that in the performance of his duties as trustee in the foreclosure of said third mortgage, he has already necessarily advanced and become personally liable to pay the sum of over two thousand five huudred dollars.

Deponent further saith that in the present condition of the affairs of the La Crosse and Milwaukee Railroad Company, when the same is advertised for sale on a judgment in favor of the plaintiff in this suit, and proceedings are about being commenced for the foreclosing of the land grant mortgage, and the receipts of the road for this year will not pay more than necessary expenses and interest on the city debt and 1st and 2d mortgages, as deponent is informed by Selah Chamberlain, the lessee of said road, and when the people of Wisconsin are anxious to have the remainder of the land grant road commenced, so as to insure its completion before the expiration of the time limited by the act of Congress, and for other reasons, it is important, for the interests of the third mortgage bondholders, that a foreclosure of the trust deed or mortgage to deponent should be accomplished speedily and at the earliest moment; that the security given by the said Cleveland on the granting of the *ex parte* injunction in this cause is entirely inadequate and insufficient: that a good bond should be given in the penalty of at least one hundred thousand dollars, to protect deponent, as trustee, from the damages to the bondholders from the issuing of any injunction restraining sale by deponent under said trust deed or mortgage, and the supplement thereto; that the foreclosure of prior liens, and the sale of the road under judgment or otherwise, may cut off said mortgage entirely during the pendency of a protracted litigation.

Deponent further saith that in the performance of his duties as trustee, when at Milwaukee, in January last, it became an
217 important point of consideration with deponent, in case of a foreclosure and sale, in what manner he could protect the five

hundred and fifty thousand dollars of bonds in the hands of Stoddard Judd, in trust for the farm mortgagors, and also all the other holders of said third mortgage bonds; that deponent deliberated on the subject, carefully examined the matter, and discussed it with several persons; that deponent was of opinion that if the road should be sold at the present time to the highest cash bidder, it would pass into the hands of one or a few persons for a small sum, and that only a small dividend would be made to the bondholders, and that many of them, including the farm mortgagors, would thus become substantially cut off from almost all benefit and advantage from such foreclosure and sale, and be deprived of their fair proportion of the value of the property included in said mortgage or trust deed and supplements. Deponent further saith, that he advised and consulted on this subject with E. G. Ryan, esq., of Milwaukee, his counsel, and that after several interviews with him deponent undertook to procure the passage of a law by the legislature of Wisconsin, allowing deponent to become a purchaser in trust for the bondholders; that said Ryan draughted such a law of a general character, and deponent went to Madison, in said State, to procure its passage, and the same was passed after being amended, with only two dissenting votes in the Senate, and by the House unanimously; that deponent appeared before the Judiciary Committee of both houses and stated his situation as trustee under said third mortgage, and requested the passage of such law to facilitate the foreclosure thereof, and to protect the farm mortgage and other bondholders under said third mortgage and put them on equality; that said act was passed for this purpose, and was approved by Governor Randall on the same grounds, after a personal explanation by deponent of said objects and purposes.

Deponent further saith, that in his opinion there would have been great danger of an entire repeal by the last legislature of the charter of the La Crosse & Milwaukee Railroad Company, with all its rights and privileges, but for the probability of a reorganization of said company on a solid and permanent basis, upon the anticipated foreclosure of the third mortgage or deed of trust executed to deponent.

Deponent further saith, that the said supplement dated August 10th, 1858, was executed at the request and on the demand of this deponent, and that the execution thereof was not suggested by any of the directors of said company, but came from and was required by this deponent in the performance of what he considered to be his duties as trustee.

Deponent further saith, that annexed hereto, marked schedule "B," is a communication, published in the N. Y. Tribune on the 1st day of October, 1858, which deponent charges, on information and belief, was written and procured to be published, and its pub-
218 lication paid for, by the said plaintiff; which communication shows the value attached to the stock of the La Crosse & Milwaukee Railroad Company by said Cleveland at that time, and the nature of his efforts to protect the interests of the stockholders in said road.

WILLIAM BARNES.

Taken, subscribed and sworn to before me, at city of Albany, N. Y., this 3d May, 1859. Witness my hand and seal officially.

[SEAL.] R. J. HILTON,
Commissioner for Wisconsin,
At city of Albany, N. Y.

Document A.

Whereas a large floating debt has accumulated for rolling stock and materials furnished and provided, and labor performed, for the La Crosse & Milwaukee Railroad Company, which remains unpaid and is unsecured by any mortgage or other security upon the road or other property of said company; and whereas a large number of persons along the line of the road in Wisconsin have mortgaged their farms to the company to aid in the construction, which farm mortgages have been used by the company, with the stipulation on its part to pay the interest accruing thereon, and a failure to pay which interest would produce great distress among the farm mortgage stockholders; and whereas it is necessary that immediate provision be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages and the other just indebtedness of the company, and also to provide for taking up and cancelling said farm mortgages when deemed expedient: Therefore,

Resolved, That an issue of bonds of the said company be and is hereby authorized, to the amount of $2,000,000, to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all depots, depot grounds, lots, buildings, stations, materials, line track improvements of every kind, all rolling stock, cars, locomotives, and all real and personal property appertaining to the said line of railroad, said bonds to be in the sums following: 1,000 bonds in sums of $500 each, and 1,500 bonds in sums of $1,000 each, payable in thirty years from date, bearing interest at the rate of seven per cent. per annum from the first day of July, 1858, payable semi-annually after one year, at the Albany Exchange Bank in the city of Albany, the first payment of interest to be made on the first day of July, 1859; said bonds to be printed in the usual form with coupons, and the mortgage securing the same to be executed by the president and secretary of said company, to William Gould, of the city of Albany, trustee for said bondholders, and providing in case of death, resignation or removal of said trustee, for the appointment of a successor on application to one of the justices of the supreme
219 court of the State of New York; also a sinking fund, to provide for the gradual payment of said bonds, viz: the sum of $25,000 annually, the first payment to be made on the first day of July, 1861. Said trustee shall for the payment of the sinking fund advertise for the purchase of said bonds by giving ten days' notice in New York, Albany and Milwaukee newspapers; said mortgage so to be executed subject to $922,000 outstanding bonds, secured by a first mortgage upon the eastern division; also to Milwaukee city

bonds, $314,000; also $1,000,000 2d mortgage eastern division, $4,000,000 mortgage upon the line of railroad from Portage City to La Crosse, and subject to the 2d mortgage of about $200,000 on the road from Portage City to the La Crosse, and from junction, near the village of Tomah, to the terminus on Lake or river St. Croix.

220 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others,
against
NEWCOMB CLEVELAND.

STATE OF NEW YORK,
City and County of Albany, ss:

David V. N. Radcliffe, of the city of Albany, being duly sworn, doth depose and say, that he has been informed that he has been made a defendant in the above-entitled suit; that he has been shown the bill of complaint in said suit, and has read the same; that the said bill charges and complains of fraud on the part of the directors of the La Crosse and Milwaukee Railroad Company, in the making and giving a mortgage for two millions of dollars on the entire line of said road, on or about the 21st day of June last, and with having fraudulently issued and disposed of the bonds under the said mortgage, called third mortgage bonds, and charging the said directors with the design of selling out and sacrificing the rights and property of the stockholders. That this defendant indignantly denies such charges as false and slanderous, and entirely without foundation; that there are no facts or circumstances, or proof, to warrant or sustain such charges, and deponent declares that such third mortgage was executed in good faith, and with the most anxious desire to continue the construction of said railroad, and to complete the same, and instead of sacrificing and wiping out the stocks, to save the road, and retain its control in the hands of the stockholders.

That the contract with Selah Chamberlain for constructing the said railroad from Tomah to La Crosse had exhausted nearly all the resources of the said company; that the previous incumbrances were mortgages upon separate divisions of the said railroad, and also several judgments of large amounts; that the complainant, in this suit, had advertised and endeavored to sell said railroad; that other creditors were commencing suits for debts and for right of way; and on the first day of August, 1858, the coupons upon the land grant mortgage for $4,000,000 fell due, and a foreclosure was appre-
221 hended, by which the western division of the said road would have been lost to the company, and probably sacrificed by sale for much less than the amount due upon the first mortgage; that immediately after the election of directors in the month of May last, the only resort to provide for the indispensable means to continue the existence of the company was by making a third mortgage upon

the entire line of the said railroad from Milwaukee to La Crosse, and which measure, at a meeting of the directors at Milwaukee, on or about the first day of June, 1858, was duly determined upon, and the said mortgage, called the third mortgage, for $2,000,000, duly executed, as this deponent was informed and believes to be true.

And this deponent further says, that he was elected a director of said company in the month of May last; that he attended to the correspondence and office of the said company, as assistant secretary, at the city of Albany; that he continued as such director until the fifteenth day of June last, when he resigned his directorship, which was duly accepted; that in the latter part of July last, he was again requested to become a director, and on the 27th day of July he became a director, and continued such until the thirteenth day of January last, when deponent again resigned, and his resignation was duly accepted.

That the company were unable to pay the interest upon the land grant mortgage on the first day of August last, and it was apprehended that a foreclosure would immediately commence; that to make provision for the coupons and to fund pressing debts, it became absolutely necessary to change the time of payment of interest upon such third mortgage bonds, and to alter the denomination of such bonds to provide for coupons and debts of small amount, and to make them equivalent for coupons upon the land grant bonds; the third mortgage should embrace all that was included in the land grant mortgage, to provide for which, and to render the said third mortgage bonds more valuable and acceptable to creditors and purchasers, a supplementary trust deed was executed to the said William Barnes, in good faith, and to save the said railroad and its franchises from sacrifice under some one of the previous incumbrances.

And this deponent further says, that at the time of making and executing said third mortgage, and also the supplemental mortgage, on or about the 11th day of August, 1858, no act, or expression, or declaration was made, either by this deponent or any other director, to the knowledge of deponent, that such third mortgage was intended to be foreclosed, and to cut off and sacrifice stockholders; but the same was done in good faith, and intended for the benefit and protection of stockholders and creditors of said company. That this deponent is not now, or has he ever been, directly or indirectly the owner of any of said third mortgage bonds so executed in June last, or under the said third mortgage; that he knows of no combination or design of any of the directors to obtain the said bonds fraudulently,
or to control the future management or ownership of the said
222 railroad, nor is there any agreement or understanding, express or implied, that he, this deponent, is to have any of the said third mortgage bonds or any interest in them whatever.

That on or about the seventeenth day of June last, as appears by the minutes of said directors, a committee to fund the floating debt, and to attend to the financial affairs of said company, was appointed, consisting of Messrs. William A. Guest, Alfred Noxon, and A. C.

Gunnison, who gave public notice and exerted themselves faithfully to induce creditors to accept third mortgage bonds in payment of their debts.

That this deponent has no knowledge of the disposition, issue, or delivery of any third mortgage bonds, except such as were authorized by a resolution of the board of directors, in payment of debts and legitimate obligations of said company; that no foreclosure of the said third mortgage was spoken of or alluded to in any manner, or contemplated, until after the completion of the road, and after the failure of an arrangement and plan hereinafter mentioned, which was agreed to by Selah Chamberlain, the lessee in possession of the said railroad; that this deponent relied with much confidence upon obtaining full possession of 300,000 acres of land under the land grant when the said railroad was completed, and that with the increased receipts of the said railroad, a sufficient amount could be realized and appropriated by the said Chamberlain to prevent any sale or foreclosure of any of the mortgages upon the said road.

This deponent further says, that upon the completion of the said railroad to La Crosse, in the month of October last, he was at Milwaukee and attended several meetings of the directors, when it was discussed among said directors in what manner and by what means the organization of the company could be sustained, and a foreclosure of the mortgages upon said railroad and a sale be prevented; that such consultation and discussion resulted in a plan or arrangement proposed by Alfred Noxon, one of the directors, by which the interest upon the land grant mortgage bonds should be funded with the third mortgage bonds, and a part of the earnings of the road applied by Selah Chamberlain, the lessee, to the payment of the coupons of said third mortgage bonds, to claims for right of way, and to indispensable expenses of the government of said company. That the compensation of the various officers and directors of the said company were reduced to the lowest sum for which the required officers and directors could be obtained. The details of which plan or arrangement are more particularly set forth in a copy of the resolution to carry out the same, taken from the minutes or records of the proceedings of the said directors, at their meeting held at Milwaukee on or about the day of October, 1858, a copy of which is hereto annexed, marked A.

This deponent further says, that such plan or arrangement was unanimously and in good faith approved by the full board of directors, and was duly submitted and proposed to the said
223 Selah Chamberlain, the lessee or mortgagee in possession of the said railroad, under the lease or mortgage given to said Chamberlain by said company in the year 1857, and which, after examination by said Chamberlain, was accepted and verbally agreed to by him; that such plan and arrangement was made in good faith and in full confidence that it would be carried out and the railroad and the company saved from sale and foreclosure from either of the mortgages or incumbrances; that this deponent and all the directors relied upon said agreement and arrangement being consummated;

that the said Chamberlain only required time to close up his Minnesota affairs previous to the closing of the navigation of the Mississippi river, when he engaged to attend a meeting of the directors of the said company at the city of Albany, and enter into a written contract to carry out such proposed arrangement; that the said Chamberlain did, in pursuance of such arrangement above mentioned, on the
day of November or December last, come to Albany, and then, to the regret and surprise of the board of directors, stated to them that he had been advised by his counsel not to enter into such arrangement proposed and agreed to as above stated, at Milwaukee, in the month of October last, as he could not do so without violating the terms of his lease. The said Chamberlain further stated that he had found a larger amount of debts for right of way than he supposed to exist, and that the receipts of the road were so much less than had been estimated, he did not think the receipts would amount to sufficient to pay expenses and the interest upon the first and second mortgage upon the eastern division; the said Chamberlain, therefore, positively refused and declined to enter into such agreement and arrangement as had been proposed and accepted at Milwaukee in October, when the said railroad was completed to La Crosse.

Deponent further says, that a full board of all the directors was immediately convened by the president, to consult and provide for the extremely embarrassing circumstances which then existed; that unpaid claims for rights of way, and mortgages falling due for depot property at Milwaukee, were pressing, and threatening to prevent the running of cars upon the said road, and to sell lots covered by depot building; that four hundred thousand dollars of said third mortgage bonds, which had been pledged to said Chamberlain for the payment of a note for $20,000, in August last, by the finance committee in the city of New York, were about to be sold, and which had been provided for and would have been redeemed, if said Chamberlain had complied with and carried out the proposed plan and arrangement above mentioned. The time for the payment of the said note for $20,000 to said Chamberlain was twice extended upon the urgent application of the directors, and all the directors of said company went to New York on or about the fourth day of January last, to obtain further extension, and to prevent the sale of the said
bonds pledged as security for the payment of the said note;
224 that application was made to moneyed men to buy said bonds,
or to lend sufficient money upon them to aid the company in paying said note of $20,000, and to prevent the sacrifice of other property of the said company, but without success; that capitalists replied to such applications that the prior mortgages and judgments were greater than the road would bear, or that the income from said railroad would pay; that the said Chamberlain, in reply to the last application to extend the time of payment of said note, stated to this deponent that he, the said Chamberlain, had already anticipated the proceeds of said note, and it was out of his power to prevent a sale of said bonds, except by raising the money, which he was unable to do.

That this deponent was not present when said bonds were sold; has no knowledge of any collusion on the part of any director with said Chamberlain or the seller of said bonds; nor does this deponent know that any director was interested in the sale or foreclosure of said bonds.

And this deponent further says, that subsequent to the sale of the said bonds pledged to the said Chamberlain, he has been reliably informed that third mortgage bonds of the said company could be bought in the city of New York for the sum for which they were sold, and that said bonds are now for sale at such price with interest.

And this deponent further says, that all acts of said deponent as director has been done in good faith, as deponent believed, for the interest and protection of said company; that all the acts and proceedings of the board of directors, so far as the knowledge and participation of this deponent extends, all the facts and circumstances connected with the issue and disposition of the said third mortgage bonds, conclusively refutes and disproves the charges and allegations made in the said bill of complaint.

D. V. N. RADCLIFFE.

Taken, subscribed, and sworn to, before me, on this 3d day of May, A. D. 1859, at city of Albany, N. Y. Witness my hand and seal officially.

R. J. HILTON,
Commissioner for Wisconsin,
At city of Albany, N. Y.

Document A.

At a meeting of the board of directors of the La Crosse and Milwaukee Railroad Company, held in Milwaukee, Oct. 23d, 1858—

Present, Messrs. Wm. E. Smith, Jno. P. McGregor, A. Noxon, A. C. Gunnison, Wm. Platt, G. W. Luther, D. N. Radcliff, and N. P. Stanton, president—

Mr. Noxon submitted to the board the following plan and proposition to conduct the financial affairs and relieve the present pecuniary embarrassment of the company.

225 Whereas this company has now completed its trunk line of road from Milwaukee to the Mississippi river at La Crosse, and believing that its future earnings will be such as to justify the estimate of its friends as to the great merit of the line, and produce a net amount of earnings equal, at cost, to the interest to be paid upon $8,000,000 of debt, and ultimately leave a surplus to its stockholders; and whereas the company, in the completion of the road itself, has exhausted all its available means, leaving the road inadequately supplied with rolling stock, and without sufficient depot buildings; and it being important to the preservation and improvement of the property that a considerable amount of ballasting and fencing should be done on the line during the next two years; and whereas the road is now in the possession of Selah Chamberlain as

lessee, and its net earnings on the larger portion of the road are, by the terms of said lease, applied only to the payment of the interest on the mortgage debt upon the eastern division of the road, and to the payment of said Chamberlain's judgment against this company, thus leaving the interest on the land grant bonds, the interest on the farm mortgage bonds, and the unsecured floating debt, inadequately provided for; and whereas this company have, for the purpose of protecting its obligations to the holders of the farm mortgage bonds, and for the funding of its other unsecured and legitimate debts, authorized the issue of $2,000,000 of bonds, secured by a third mortgage upon its entire line of road, its appurtenances and franchises: Now, therefore, for the purpose of carrying out the object hereinbefore stated, it is hereby resolved, that the said third mortgage bonds, to the extent of $1,900,000 or upwards, being the amount now available for the use of this company, be, and they are hereby, appropriated and set apart in such amounts, and for such purpose, and to be used as is hereinafter stated, to wit:

For the purpose of funding two years' interest warrants or coupons of the $4,000,000 land grant bonds of the company	$800,000
For the purpose of paying the interest coupons on the $1,085,700 farm mortgage bonds, as they may from time to time fall due, up to the maturity of said bonds, or to compromise and cancel said bonds of this company	600,000
And for the purpose of funding or compromising the remaining floating and unsecured debts of the company, the balance of said issue being upwards of	500,000
	$1,900,000

Resolved, That the whole of the said bonds remaining unused, being $1,900,000 or upwards, be placed in the Bank of the Capital, in the city of Albany, N. Y., in special deposit, to be withdrawn from time to time, and in such amounts as may be necessary to carry out the foregoing resolutions, and then only on an order signed by
226 the president and two members of the committee, for funding the floating debt of the company.

Resolved, That in carrying out the two foregoing resolutions, all of the said bonds except the $800,000 first mentioned, before being placed in deposit, shall have the coupons maturing before the 1st day of January, 1861, cut from said bonds and the same cancelled.

Resolved, That in carrying out the three foregoing resolutions, the said committee be allowed to pay out the said 3d mortgage bonds in funding the coupons of the land grant bonds, at the rate of 70 cents to the dollar, and that in no other case shall the said bonds be used in the funding, compromising, or payment of debts at less than their par value, except that the said committee may in their discretion allow interest on any debt up to the date when the said 3d mortgage bonds commence to draw interest.

Resolved, That the foregoing resolution appropriating $800,000 for the payment of the coupons on the land grant bonds shall be binding on this company only in case an arrangement (now contemplated) can be made with Selah Chamberlain, by which he shall return to the company the 3d mortgage bonds now in his possession, and agree to pay over to the president the sum of $1,500 per month, from and after the 1st day of November next, and up to January 1st, 1861, which is to be used for the purpose of defraying the necessary expenses and salaries incident to our organization; also the interest on the said third mortgage bonds maturing on the 1st days of January and July of each year, and up to January 1st, 1861, which interest shall not exceed the following amounts:

January 1st, 1859, on	$300,000	$10,500
July 1st, 1859, on	500,000	17,500
January 1st, 1860, on	700,000	24,500
July 1st, 1860, on	900,000	31,500

And shall also pay such further sums of money as may be necessary to protect the property of the company from sale by foreclosure of mortgages, or for claims for right of way, and which last-mentioned payment shall be made only on the approval of the president or the executive committee, or the general agent of the company.

Resolved, That Noxon, Smith and McGregor be, and they are hereby, authorized to make an arrangement with Mr. Chamberlain in accordance with the last-recited resolution.

Resolved, That all existing resolutions of this board which conflict with the carrying out the foregoing resolutions be, and the same are hereby, rescinded.

Whereupon the ayes and noes were required—affirmative Messrs. Luther, Gunnison, McGregor, Smith, Platt, Noxon, Radcliff, Stanton.

Adopted unanimously. Adjourned without day.

(Signed) D. V. N. RADCLIFF,
Assistant Secretary.

227 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others,
against
NEWCOMB CLEVELAND.

CITY AND COUNTY OF ALBANY, N. Y, *ss:*

Albert C. Gunnison, being duly sworn, doth depose and say that he is one of the directors of the La Crosse and Milwaukee Railroad Company; that he was appointed or elected such director on or about the fifteenth day of June last; that he has seen and read an affidavit made by Moses Kneeland, of Milwaukee, in the above-entitled suit, in which the said Moses Kneeland states and deposes that immediately after the last election, held in Milwaukee, in the month of May last, the said Moses Kneeland had conversations with Stanton, Luther,

Noxon, Shear, and Gunnison, defendants in this suit, and with William E. Smith, about the same subject above referred to, meaning the third mortgage then lately executed, or about to be executed, and that the said Stanton, Luther, Noxon, Shear, and Gunnison advocated the issue of bonds and a third mortgage, and called third mortgage bonds, for the purpose of wiping out the stock and floating debt of the said company, and for the sole purpose of suffering the same to be foreclosed to accomplish this purpose; that the said Kneeland, in said affidavit, further deposes that it was not pretended or expected that the company could ever make a payment thereon; on the contrary, the design was not to attempt payment, but to foreclose for the purpose of wiping out said stock and floating debt.

This deponent absolutely denies that he ever had such conversation with the said Moses Kneeland; that he never held such conversation with any one of like purport or effect, and that he was not a director of the said company until the said 15th day of June, 1858; that he had never spoken to said Kneeland upon such subject, as he did not know until elected a director that a third mortgage had been, or was to be, made and given.

Deponent further says when he took his seat as a director he was first informed that bonds called third mortgage bonds were
228 to be issued, secured by mortgage upon the entire line of railroad; that he has no doubt the same was done in good faith, and without any intention to use the same for the purpose of foreclosing the same, or wiping out the stock; that he never heard such an intention expressed by any of the directors of said company; on the contrary, it was declared and stated that it was the only resource to save the road from sale and foreclosure, under the land grant mortgage and the judgments which had been obtained against the company. That all the directors with whom deponent interchanged views and expressed opinions felt a strong confidence, if the road could be completed, the land grant to the extent of 300,000 acres would no longer be withheld, and with the revival of business the company could be saved from dissolution.

Deponent further says that the said Kneeland further stated in his said affidavit that Selah Chamberlain told the said Kneeland that the directors of said company had proposed that if he, Chamberlain, would pay over to said directors from the earnings one thousand dollars per month, they, the said directors, would not issue said third mortgage bonds. This deponent absolutely denies such representation by said Kneeland; the same is utterly untrue; that no other proposition was made to the said Chamberlain, except under the resolution and plan proposed by Col. Noxon, as stated in the affidavit of D. V. N. Radcliff, one of said directors at that time, and one of the defendants in the above-entitled suit; that a copy of the said resolution of the said Noxon is annexed to the affidavit of the said Radcliffe, to which this deponent refers, and by which it will be seen that the said plan and arrangement proposed by the said Noxon could only be carried through with the aid of said third mortgage bonds, and upon which the said Chamberlain was to pay the interest or coupons

on the 1st day of January, 1859; that the said Chamberlain was in favor of such plan and arrangement, and deponent knows it was proposed and agreed to in good faith, and that it would have proved for the mutual benefit of said Chamberlain and the creditors and stockholders of said company; that this plan and arrangement was fully and confidently relied upon, and that Mr. Chamberlain was to come to Albany and enter into a written agreement and obligation to carry out the same; that within two or three weeks after such proposition, at Milwaukee, the said Chamberlain came to Albany, and declined and refused to enter into such previous arrangement, on the ground that he had no right to provide for the interest upon the said third mortgage bonds out of the earnings of the said railroad.

And this deponent further says he was one of the finance committee to find the floating debt, and to provide ways and means to get along and continue the existence of the company; that in the disposition of said third mortgage bonds, they were disposed of fairly and in good faith, and upon the expectation and determination to provide
229 for the coupons payable on the 1st day of January, 1859; that the bonds pledged to Selah Chamberlain as collateral security for a note for $20,000 were carefully registered, with the intention to prevent their sacrifice, and in the place and arrangement agreed with Chamberlain, in October, at Milwaukee, these four hundred bonds were to be surrendered to the company.

Deponent further says that all the transactions and proceeding of the said directors and of the finance committee were conducted and performed solely for the benefit of the stockholders, and to prevent a foreclosure until it was announced by the said Chamberlain that he could not aid the directors from the receipts and earnings of the said railroad. That the governor of Wisconsin still withheld the land grant of 300,000 acres; that the business of the country declined; the receipts of the road after it was completed were very little more than running expenses; that on the first day of February, 1859, another coupon or instalment of interest upon the land grant, mortgaged for $4,000,000, fell due, when a foreclosure was expected by which the western division, from Portage City to La Crosse, would be sacrificed and lost, and all hope of saving the road for a longer time was reluctantly abandoned by this deponent.

Deponent further saith that he is now the owner of above one hundred shares of stock of the said company, amounting to the sum of ten thousand dollars, and that he has been the owner of about twenty shares for one or more years, amounting to two thousand dollars; that he is the owner of about four thousand dollars of third mortgage bonds which he obtained in exchange for regular bonds of said company; that he is not the owner of any other third mortgage bond; that he has acted in good faith, as one of the finance committee of said board of directors; that notices of which the annexed are copies, marked A and B, were published in the New York Times and New York Tribune for several months, and such third mortgage bonds were exchanged for the legitimate bonds of said com-

company and the legal debts of the said company; that this deponent has not disposed of or placed any of said third mortgage for any fraudulent purpose, or for the purpose of the future control of the said company or railroad; that this deponent has intended faithfully to discharge his duty as such director for the interest of the stockholders and others concerned in said company.

That the said railroad has been advertised by the marshal of Milwaukee, under a judgment in favor of Newcomb Cleveland; that the said Newcomb Cleveland has exerted himself to prostrate the said company, to embarrass the directors in the construction of said road, and in all its affairs that he has openly and frequently expressed his determination to destroy the said company, and to such extent as to create the belief that he was insane and incapable of conducting properly any business affairs; that all the charges and allegations are false and unfounded, and entirely inconsistent with the facts connected with the said third mortgage.

A. C. GUNNISON.

Subscribed and sworn to before me the 5th day May, 1859. Witness my hand and official seal.

[SEAL.] SYLVESTER LAY,
Wisconsin Commissioner, 16 *Wall Street.*

OFFICE LA C. & MIL. R. R. CO.,
New York, Sept. 10, 1858.

Notice is hereby given to the holders of the first mortgage land grant bonds of the La Crosse & Milwaukee R. R. Co. that the undersigned are authorized to fund the August past due coupons of said bonds at par. by giving in exchange therefor the sinking fund bonds of the company at seventy cents to the dollar, which bonds are secured by a third mortgage on the entire line (200 miles) of road, and upon all its depots, lands, franchises and rolling stock, and all other real and personal property belonging to said company.

WILLIAM A. GUEST,
ALFRED NOXON,
A. C. GUNNISON,
Committee.

B.

OFFICE LA C. & MIL. R. R. CO.,
New York, Sept. 9, 1858.

The undersigned having been appointed a committee by the board of directors of the La Crosse & Milwaukee Railroad Company, and duly authorized to compromise and settle the floating debt of said company, respectfully give notice that they are now prepared to adjust said debts and to extinguish the same by giving the bonds of the said company, secured by a third mortgage upon the entire line of their railroad, and upon all its depots, lands, franchises and rolling stock, and all other real and personal property belonging to said company. The committee respectfully request that the creditors

present their claims at their office, No. 27 William street, New York, believing it to be the intent of all parties that the debts of the company should be liquidated without delay.

WILLIAM A. GUEST,
ALFRED NOXON,
A. C. GUNNISON,
Committee.

231 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE AND MILWAUKEE RAILROAD COMP'Y,
WILLIAM BARNES and others,
against
NEWCOMB CLEVELAND.

STATE OF NEW YORK,
City and County of Albany, ss:

Stephen H. Alden, of said city, being duly sworn, doth depose and say that about three years ago he resided in Milwaukee, in the State of Wisconsin, and was one of the directors of the La Crosse and Milwaukee Railroad Company; that he removed to Albany about three years ago, and in the month of July, in the year 1859, resigned his directorship, but has ever since been largely interested in the stock and securities of the said company.

And this deponent further says that he has been informed that he has been made a party to the above-entitled suit; that he has been shown and has read an affidavit in said suit, made by Moses Kneeland, of Milwaukee, in which the said Kneeland has stated that he had *had* and heard several conversations with this deponent and with George W. Luther and Alfred Noxon, in which was frequently discussed the matter of a third mortgage upon the said railroad for the purpose of foreclosing the same and wiping out and cutting off the stock and unsecured debts of said company, and that such was the design of the said third mortgage and of this deponent; and this deponent says such representation and statement made by the said Moses Kneeland, or by any other person, is wholly untrue, and without any foundation whatever; that he has never held such conversation in the presence of the said Moses Kneeland or with him, or with any other person or persons; that he has not seen the said Moses Kneeland since about the middle of April, 1858, at which time or previous to wh ch time this deponent had never heard the said third mortgage spoken of; that he is confident he has never uttered or declared any such intention, and that the last time deponent saw the said Kneeland, or any time previous to the last interview with
232 the said Kneeland, no foreclosure or sale of said La Crosse and Milwaukee railroad had been mentioned or alluded to; on the contrary, the great and only anxiety was to complete the railroad, notwithstanding the hostility of Newcomb Cleveland, the plaintiff in this suit, and the embarrassments created by his repeated declarations that he would do all in his power to prevent the completion of the road.

And this deponent further says, to the best of the knowledge and belief of this deponent, the said third mortgage has been executed in good faith and for the best interest of the said company; that he believes the bonds issued by virtue of the said third mortgage have been fairly and correctly disposed of; that he has no knowledge of any disposition of said bonds for the future control of said railroad company or its franchises, or for any fraudulent purpose whatever.

That, in the opinion of this deponent, Newcomb Cleveland, the plaintiff in this suit, has done more to destroy the La Crosse and Milwaukee Railroad Company than any man living, and would have sacrificed stockholders and creditors if it had been in his power to accomplish its destruction. That deponent believes the said Newcomb Cleveland, by his false and slanderous representations, openly uttered and declared in Wisconsin, New York, and elsewhere, and by his publications in newspapers within the last eighteen months, has prejudiced the rights, interest, and value of the stock and securities of said company, and injured and destroyed their value, and it is one of the principal causes of the great sacrifices which have been made to complete the said road.

S. H. ALDEN.

Taken, subscribed and sworn to before me, at city of Albany, N. Y., this 3d May, A. D. 1859. Witness my hand and seal officially.

[SEAL.] A. J. HILTON,
Commissioner for Wisconsin, at City of Albany.

233 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
WILLIAM BARNES and others,
against
NEWCOMB CLEVELAND.

CITY AND COUNTY OF ALBANY, *ss:*

Jacob H. Shear, being duly sworn, doth depose and say that he was at the city of Milwaukee, in the month of May last, when the election for directors of the La Crosse and Milwaukee Railroad Company was held; that he was then a stock and bond holder in said company, and was elected one of the directors of said company; that this deponent was present at a meeting of the board of directors on the first day of June last, or thereabouts, when a resolution was passed authorizing the making and executing a third mortgage; that the said mortgage was authorized and issued in good faith, as stated in the preamble and resolution, authorizing said third mortgage, and that no mention was made, or any intention expressed, to foreclose and sell out the said railroad; that no such intention was ever thought of or expressed by this deponent or any of the other directors within the hearing of this deponent; that the supplemental trust deed subsequently given and executed was made for the purpose of making the said third mortgage bonds more available and acceptable to

creditors, and more desirable to any purchasers of said bonds, and in good faith for the interest and benefit of the said company; that this deponent continued as such director until about the fifteenth day of September last, when this deponent resigned his office as director, and which was duly accepted.

And this deponent further says that he is not the owner of any of said third mortgage bonds directly or indirectly; that he has never owned any of said bonds directly or indirectly, and has no knowledge or information of the disposition of the said bonds, except from the affidavits which he has occasionally heard spoken of, or alluded to in said affidavits.

And this deponent further says that he has seen and heard read an affidavit made in the above-entitled cause by one Moses Kneeland, in which he, said Kneeland, deposes and states that he has
234 had a conversation with this deponent, and represents that this deponent had said, or admitted to him, that the said third mortgage *was created* and given for the purpose of wiping out the floating debt and the stock of said company; that this deponent has no recollection of having any conversation with the said Kneeland, in relation to the said third mortgage, in any respect whatever; and that as to the representation of the said Kneeland, that deponent had said to him that the said third mortgage was created and executed for the purpose of being foreclosed and selling out the road, and to wipe out, or cut off, the stock and floating debt, such representation and deposition of the said Kneeland is utterly untrue.

JACOB H. SHEAR.

Subscribed and sworn to on this fourth day of May, in the year 1859, by the said above-named Jacob H. Shear, before me, Edward Wade, a commissioner in and for the State of New York, duly appointed and commissioned by the governor of the State of Wisconsin to take and certify depositions and affidavits, &c., to be used in said State of Wisconsin.

In witness whereof, I have hereunto subscribed my name and hereto affixed my seal of office, at the city of Albany, in the State of New York, on the 4th of May, 1859.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

235 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others,
against
NEWCOMB CLEVELAND.

STATE OF NEW YORK,
Albany Oity and County, ss:

George W. Luther, of said city, being duly sworn, saith, that he is one of the directors of the La Crosse and Milwaukee Railroad Com-

pany, and has been such director for the past year, and prior thereto. Deponent further says that he has been acquainted with Moses Kneeland, of the city of Milwaukee, for the space of about fourteen or fifteen months; that this deponent has read and heard read, and personally examined, a copy of the affidavit of Moses Kneeland, made and sworn to in this cause before Mat. H. Carpenter, notary public of Wisconsin, on the 20th day of April, 1859; that the statement of Moses Kneeland in said affidavit that Stephen H. Alden, Alfred Noxon, and this deponent were in favor of issuing bonds and mortgage similar to those issued, called the third mortgage bonds, for the purpose of foreclosing the same, and thus wipe out the stock of said company and the floating debt of said company, is positively untrue in form and substance, to deponent's own knowledge, as far as relates to himself personally, and to his best knowledge, information, and belief as far as respects said Alden and Noxon; that this deponent never made any such or any similar statement or statments to said Kneeland or any other person at the time stated in his said affidavit, or at any other time.

That to deponent's own knowledge, as far as he is concerned personally, the said third mortgage and the supplement thereto were not in fact executed for any such purpose or with any such intention as is represented by said Kneeland in his said affidavit.

Deponent further saith that the statement in the said affidavit of said Kneeland, that immediately after the last election of directors of said company he had conversations with N. P. Stanton, Al-
236 fred Noxon, Jacob H. Shear, A. C. Gunnison, William E. Smith, and this deponent, on the same subject referred to in said affidavit, that most of them advocated the issue of bonds and a third mortgage similar to those which subsequently were issued and called third mortgage bonds, for the purpose of wiping out the said stock and floating debt, and for the sole purpose of suffering the same to be foreclosed to accomplish such purpose, and that it was not pretended or expected by either of them that the company could ever make a payment thereon, and that the design was, on the contrary, not to attempt such payment, but to foreclose for the purpose of wiping out said stock and floating debt, is also unqualifiedly false in the aggregate, and in each particular as far as relates to this deponent personally, and as far as relates to said other persons, to the best knowledge, information, and belief of deponent.

Deponent further saith that he never made any such or any similar statement or statements to said Kneeland or to any other person at the time specified in his affidavit, or at any other time, and that he never heard the persons mentioned by said Kneeland, or either of them, make any such or any similar statement or statements at the time specified by said Kneeland in his affidavit, or at any other time.

Deponent further saith that he has never at any time had any such conversation with said Moses Kneeland on the subject of the execution or the proposed execution of the third mortgage of said company, and that the affidavit of said Moses, as far as the same relates

to this deponent, is either wilfully false or was made under a gross and almost incredible mistake on the part of said Kneeland.

Deponent further saith, that he was elected one of the directors of the La Crosse and Milwaukee Railroad Company in May, 1858; that he had served as such director for several months preceding said annual election in May, 1858; that at said annual election, and at a meeting of the board of directors held soon thereafter in the city of Milwaukee, among other things discussed and considered were the best ways and means of satisfying and discharging the large floating debt of the company in judgment and not in judgment, and due and maturing thereafter, and insuring the completion of the railroad to the Mississippi river at La Crosse; and deponent believes that the execution of a third mortgage for two millions of dollars on the entire line of the road was approved by a majority in numbers and amount of the stockholders present and represented at said annual meeting.

Deponent further saith, that he could not devise any plan, and did not hear of any scheme devised by others, by which there was any more reasonable hope or expectation of liquidating the large floating debt of the company, and extricating it from its numerous,
237 urgent, and threatening financial embarrassments, than the execution of said third mortgage in the most perfect good faith to the stockholders and creditors of said company and the public, and that deponent honestly and sincerely believed that the execution of said mortgage and issuing bonds thereunder was required by the best interests of the said railroad company.

Deponent further saith, that all the previous mortgages upon said railroad were upon the eastern or western divisions of said road, and by giving a mortgage upon the entire line would render them more desirable and enable the company to make such bonds under said third mortgage more acceptable and valuable for the farm mortgagors, and such persons who would take said bonds in payment of debts, and also to induce others to lend money or purchase said bonds; that such mortgage was given and made in good faith, expressly for the benefit of stockholders, and to prevent a sale or disposition of said road in the hope that the future earnings of said road, after being completed, would eventually redeem the company from its great embarrassment; that this deponent aided in the action of the directors to complete said road; that neither himself nor any directors expressed any intention to sell out the road under said mortgage, or to foreclose the same; that this deponent attended several meetings of the directors at Milwaukee in October last, when it was discussed in what way the road could be saved from foreclosure or sale under either of the mortgages or judgments, prior to said third mortgage; that an agreement was made with Selah Chamberlain, the lessee of said railroad, by which the interest upon the said third mortgage bonds and the land grant mortgage bonds was provided for, and the organization and existence of the said company continued and preserved in the name and for the benefit of the stockholders; that this deponent says such agreement and arrangement was made with said Chamberlain in good faith, and relied upon in full

confidence that the same would be carried out by said Chamberlain. Deponent was much disappointed when the said Chamberlain arrived at Albany and announced his determination not to fulfil and carry out such agreement and arrangement.

And this deponent says he is not the owner of any third mortgage bonds, taken or received from said finance committee, or from the president of said company, or from the directors of said company, directly or indirectly; that such bonds were disposed of in good faith, and, as this deponent believes, upon the best terms which could be obtained for the same; that any hypothecation or pledge of said bonds, to the best of the knowledge and belief of deponent, were made in good faith and without any intention to foreclose the
238 said mortgage or to sell the road, but only to provide for such debts as were necessary to raise such funds as were indispensable to save the lands and buildings of the said company from sacrifice and indispensable expenses. Deponent further says, that he is now the owner of land grant bonds and of second mortgage bonds, also one thousand dollars of stock (ten shares,) and of forty third mortgage bonds, all of which he purchased through a regular broker in the city of New York, without the knowledge or any collusion with the president, or any of the directors of said company, to the knowledge or belief of this deponent.

That this deponent has no knowledge of any coupons being taken off from said third mortgage bonds, and subsequently restored; that this deponent united with other directors in preventing the sale of bonds pledged to Selah Chamberlain as collateral security for the payment of a note of the company for twenty thousand dollars; that after two po-tponements of the sale of such bonds, the said bonds were sold, as this deponent believes, without the directors being able to prevent the said sale.

Deponent further saith that the change in the time of payment of the first interest coupons on said third mortgage, from the 1st day of July, 1859, to the first day of January, 1859, was not made as charged in said complaint in this cause for the purpose of wiping out or extinguishing the stock of said company, but that the same was made in perfect good faith to the stockholders, and for their best interests, in order to make the bonds to be issued under said third mortgage more available and more acceptable for the purposes for which they were designed, and that any and all charges of fraud in such alteration are wholly untrue and without the slightest foundation in fact; that it was ascertained that it would be exceedingly difficult to use said bonds when the first payment of interest was put off to July 1st, 1859, and the new denomination and numbers of said bonds were more convenient and useful for the accomplishment of the purposes expressed in the resolution of June 1st, 1858, for which the said bonds were designed.

Deponent further saith that the execution of said trust deed and supplement were ratified, approved, and confirmed by the said board of directors at a meeting in Milwaukee, on or about the month of October, 1858. And further saith not.

G. W. LUTHER.

Taken, subscribed, and sworn to before me on this 3d day of May, A. D. 1859, at the city of Albany, N. Y.

Winess my hand and seal officially.

[SEAL.]

R. J. HILTON,
Commissioner for Wisconsin at city of Albany, N. Y.

239 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

CITY AND COUNTY OF ALBANY, *ss:*

Eli Perry, of the city of Albany, being duly sworn, doth depose and say that he was at Milwaukee, in the State of Wisconsin, at the time when the last election for directors of the La Crosse and Milwaukee Railroad Company was held; that he was then elected a director of said company; that he then concurred in the opinion with the other directors in making a third mortgage upon the entire line of said railroad from Milwaukee to La Crosse, to the amount of $2,000,000; that it was done to relieve as far as possible the embarrassments of the company, to settle the floating debt, right of way, raise money, if possible, for indispensable means to continue the construction of said railroad, and other objects mentioned and recited in the resolution of the board authorizing the said third mortgage; that he had no knowledge of any intention to sell out the said railroad under said mortgage, nor was it mentioned or spoken of by any of the directors of the said company to foreclose said mortgage; on the contrary, great hopes were entertained and expressed that with the completion of the road realizing the business anticipated and obtaining the grant of 300,000 acres of land that the road could be saved from sale under judgment or foreclosure of mortgage and in a few years pay off its large indebtedness; that such third mortgage was given in good faith and for the interest and benefit of the company; and this deponent never heard of any intention to foreclose said mortgage until December or January last. That this deponent on the 16th day of June last resigned his office of director of said company by reason of his time being wholly occupied with his official business as mayor of the city of Albany.

240 This deponent further says that he now holds five one hundred dollar bonds of what are called third mortgage bonds, which he received from William A. Guest, one of the finance committee, in exchange for a bond of the said La Crosse and Milwaukee Railroad Company, which was one of the red bonds issued by said company for the purpose of iron for said company, and which this deponent paid eighty or eighty five per cent. for said bonds for investment for a lady, and which deponent took back from said lady, and since retained by this deponent until exchanged for a similar

confidence that the same would be carried out by said Chamberlain. Deponent was much disappointed when the said Chamberlain arrived at Albany and announced his determination not to fulfil and carry out such agreement and arrangement.

And this deponent says he is not the owner of any third mortgage bonds, taken or received from said finance committee, or from the president of said company, or from the directors of said company, directly or indirectly; that such bonds were disposed of in good faith, and, as this deponent believes, upon the best terms which could be obtained for the same; that any hypothecation or pledge of said bonds, to the best of the knowledge and belief of deponent, were made in good faith and without any intention to foreclose the
238 said mortgage or to sell the road, but only to provide for such debts as were necessary to raise such funds as were indispensable to save the lands and buildings of the said company from sacrifice and indispensable expenses. Deponent further says, that he is now the owner of land grant bonds and of second mortgage bonds, also one thousand dollars of stock (ten shares,) and of forty third mortgage bonds, all of which he purchased through a regular broker in the city of New York, without the knowledge or any collusion with the president, or any of the directors of said company, to the knowledge or belief of this deponent.

That this deponent has no knowledge of any coupons being taken off from said third mortgage bonds, and subsequently restored; that this deponent united with other directors in preventing the sale of bonds pledged to Selah Chamberlain as collateral security for the payment of a note of the company for twenty thousand dollars; that after two po-tponements of the sale of such bonds, the said bonds were sold, as this deponent believes, without the directors being able to prevent the said sale.

Deponent further saith that the change in the time of payment of the first interest coupons on said third mortgage, from the 1st day of July, 1859, to the first day of January, 1859, was not made as charged in said complaint in this cause for the purpose of wiping out or extinguishing the stock of said company, but that the same was made in perfect good faith to the stockholders, and for their best interests, in order to make the bonds to be issued under said third mortgage more available and more acceptable for the purposes for which they were designed, and that any and all charges of fraud in such alteration are wholly untrue and without the slightest foundation in fact; that it was ascertained that it would be exceedingly difficult to use said bonds when the first payment of interest was put off to July 1st, 1859, and the new denomination and numbers of said bonds were more convenient and useful for the accomplishment of the purposes expressed in the resolution of June 1st, 1858, for which the said bonds were designed.

Deponent further saith that the execution of said trust deed and supplement were ratified, approved, and confirmed by the said board of directors at a meeting in Milwaukee, on or about the month of October, 1858. And further saith not.

G. W. LUTHER.

Taken, subscribed, and sworn to before me on this 3d day of May, A. D. 1859, at the city of Albany, N. Y.

Winess my hand and seal officially.

[SEAL.]

R. J. HILTON,
Commissioner for Wisconsin at city of Albany, N. Y.

239 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

CITY AND COUNTY OF ALBANY, *ss:*

Eli Perry, of the city of Albany, being duly sworn, doth depose and say that he was at Milwaukee, in the State of Wisconsin, at the time when the last election for directors of the La Crosse and Milwaukee Railroad Company was held; that he was then elected a director of said company; that he then concurred in the opinion with the other directors in making a third mortgage upon the entire line of said railroad from Milwaukee to La Crosse, to the amount of $2,000,000; that it was done to relieve as far as possible the embarrassments of the company, to settle the floating debt, right of way, raise money, if possible, for indispensable means to continue the construction of said railroad, and other objects mentioned and recited in the resolution of the board authorizing the said third mortgage; that he had no knowledge of any intention to sell out the said railroad under said mortgage, nor was it mentioned or spoken of by any of the directors of the said company to foreclose said mortgage; on the contrary, great hopes were entertained and expressed that with the completion of the road realizing the business anticipated and obtaining the grant of 300,000 acres of land that the road could be saved from sale under judgment or foreclosure of mortgage and in a few years pay off its large indebtedness; that such third mortgage was given in good faith and for the interest and benefit of the company; and this deponent never heard of any intention to foreclose said mortgage until December or January last. That this deponent on the 16th day of June last resigned his office of director of said company by reason of his time being wholly occupied with his official business as mayor of the city of Albany.

This deponent further says that he now holds five one
240 hundred dollar bonds of what are called third mortgage bonds, which he received from William A. Guest, one of the finance committee, in exchange for a bond of the said La Crosse and Milwaukee Railroad Company, which was one of the red bonds issued by said company for the purpose of iron for said company, and which this deponent paid eighty or eighty five per cent. for said bonds for investment for a lady, and which deponent took back from said lady, and since retained by this deponent until exchanged for a similar

amount of third mortgage bonds, as above stated; that the deponent does not hold any other of said third mortgage, neither has he any interest whatever, directly or indirectly, in any of said third mortgage bonds, except the above-mentioned five hundred dollars.

And this deponent further says that he attended a meeting of the directors of the said company at the office of the company in the city of Albany, on the 15th day of June last, when a resolution was passed unanimously to regulate the denomination of the bonds to be issued under the said third mortgage for $2,000,000, so that bonds for the sums of $1,000, $500, and $100 each might be used with more convenience and satisfaction to creditors and purchasers, and for funding coupons and large and small debts and that said resolution was also amended so as to make the coupons payable on the first of January and July, so that the coupons should be payable semi-annually from the first day of July, 1858; that such resolution was passed in good faith to enable the company to use said bonds to the best advantage, and, if desired, to cut off coupons for six months or longer as might be agreed with the person taking said bonds; that it was not done with the design of foreclosing, neither was a foreclosure then spoken or thought of by this deponent, or by any of the said directors to the knowledge of this deponent.

ELI PERRY.

At the city of Albany, in the State of New York, on this 4th day of May, A. D. 1859, subscribed and sworn to by the said Eli Perry, before me, Edward Wade, a commissioner in and for the said State of New York, duly appointed and commissioned by the governor of the State of Wisconsin to take and certify depositions, affidavits, &c., to be used in said State of Wisconsin.

In witness whereof, I have hereunto subscribed my name and hereto affixed my seal of office, this 4th day of May, A. D. 1859.

[SEAL.] EDWARD WADE,
Commissioner of the State of Wisconsin, in and for the State of New York.

241 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND *against* THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

Alexander Mitchell, being duly sworn, deposes and says, that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was

made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says that he received *six thousand dollars* of said bonds in payment of a just debt of six thousand dollars
242 due from the said railroad company to this deponent for consolidated bonds of the Watertown division of the La Crosse and Milwaukee Railroad Company.

And this deponent further says that at the time of the execution of the said mortgage, he was not and has not since been an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage or in the issuing of any bonds thereunder, or in the sacrifice of any of such bonds.

ALEXANDER MITCHELL.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

243 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others,

STATE OF WISCONSIN,
Milwaukee County, ss:

C. E. Danforth, being duly sworn, deposes and says, that he is not informed, save by the said complaint, and does not believe that the mortgage or deed of trust to William Barnes therein mentioned, and commonly called the third mortgage of the La Crosse & Milwaukee

railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same. or the interest thereon.

But this deponent is informed and believes, that the said third mortgage was executed and accepted for the purpose and with the design of paying off at or near the par value of the bonds to be issued thereunder, the *bona fide* floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention, or for the purpose of foreclosing or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes, that the same was executed and accepted with the *bona fide* intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he received four hundred dollars of said bonds, in full payment of a just debt of four hundred dollars, due from the said railroad company to this deponent, for full payment of account of Wisconsin Roofing Company of J. Y. Cheeney & Co., amounting to $404 75.

244 And this deponent further says, that at the time of the execution of the said mortgage, he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage or in the issuing any bonds thereunder, or in the sacrifice of any of such bonds.

C. E. DANFORTH.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

245 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

C. D. Nash, being duly sworn, deposes and says, that he *he* is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse & Milwaukee

railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the *bona fide* floating and unsecured debt honestly due by the said railroad company, accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the *bona fide* intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company, did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he has received five hundred dollars of said bonds in payment of a just debt of five hundred dollars due from said railroad company to this deponent for con-
246 solidation bonds of the Watertown division of the La Crosse & Milwaukee Railroad Company.

And this deponent further says, that at the time of the execution of the said mortgage, he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage or in the issuing of any bonds thereunder, or in the sacrifice of any of such bonds.

C. D. NASH.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

247 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

Edgar W. Dennis, being duly sworn, deposes and says, that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned,

and commonly called the third mortgage of the La Crosse & Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes, that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the *bona fide* floating and unsecured debt honestly due by the said railroad company, accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the *bona fide* intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he received eighteen thousand dollars of said bonds, in payment of a just debt of eighteen thousand dollars due from the said railroad company to the estate of C. K. Watkins, deceased, and were received by deponent, as agent for Wm. P. Lynde and C. B. Watkins, administrators of said Watkins, at par, dollar for dollar, in exchange for $18,000 of Watertown consolidation bonds of said company.

248 And this deponent further says, that at the time of the execution of the said mortgage he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage or in the issuing any bonds thereunder, or in the sacrifice of any of such bonds.

E. W. DENNIS.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

249 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

E. Cramer, being duly sworn, deposes and says that he *he* is not informed, save by the said complaint, and does not believe, that the

mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention, or expectation of selling, using, or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company, accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says that he received fifty-five hundred dollars of said bonds in payment of a just debt of fifty-five hundred dollars, due from the said railroad company to this deponent,
250 for consolidation bonds of the Watertown division of the La Crosse and Milwaukee Railroad Company.

And this deponent further says that at the time of the execution of the said mortgage he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs: that he was not privy to the execution of the said mortgage, or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage, or in the issuing of any bonds thereunder, or in the sacrifice of any of such bonds.

E. CRAMER.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

251 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMP'Y, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

John Nazro, being duly sworn, deposes and says that he is not informed, save by the said complaint, and does not believe, that the

mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention, or expectation of selling, using, or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company, accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention, or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says that he received three thousand dollars of said bonds in full payment of a just debt of three thousand dollars, due from the said railroad company to this deponent, for account of H. J. Nazro & Co., for $2,638 35, and interest $361 65—$3,000.

252 And this deponent further says that at the time of the execution of the said mortgage he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage, or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage, or in the issuing any bonds thereunder, or in the sacrifice of any of such bonds.

JOHN NAZRO.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

253 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

Charles R. Austin, being duly sworn, deposes and says that he *he* is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using, or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe that the said mortgage was made or accepted with the design or intention, or for the purpose of foreclosing or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted, with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says that he received fifteen hundred dollars of said bonds in payment of a just debt of fifteen hundred dollars, due from said railroad company to this deponent, for con-
254 solidation bonds of the Watertown division of the La Crosse and Milwaukee Railroad Company.

And this deponent further says that at the time of the execution of the said mortgage he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage, or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud of collusion in the execution of the said mortgage, or in the issuing of any bonds thereunder, or in the sacrifice of any of such bonds.

CHARLES R. AUSTIN.

Subscribed and sworn before me this 16th day of May, 1859.
EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

255 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMP'Y, WILLIAM BARNES, and others.

STATE OF WISCONSIN.
Milwaukee County, ss:

Harrison Ludington, being duly sworn, deposes and says that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention, or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says that he received thirteen hundred dollars of said bonds in payment of a just debt of thirteen hundred dollars, due from the said railroad company to this deponent, for account of lumber furnished the La Crosse and Milwaukee Railroad Company by H. Ludington & Co.

256 And this deponent further says that at the time of the execution of the said mortgage he was not, and has not since been, an officer of the said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage, or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above-mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage, or in the issuing any bonds thereunder, or in the sacrifice of any of such bonds.

HARRISON LUDINGTON.

Subscribed and sworn before me this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

257 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

A. B. Van Cott, being duly sworn, deposes and says, that he *he* is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee Railroad, including the supplement thereto, was made or accepted without the design, intention, or expectation of selling, using, or disposing of the bonds thereunder issued for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes, that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he received one thousand dollars of said bonds in payment of a just debt of one thousand dollars due from the said railroad company to this deponent, for con-
258 solidation bonds of the Watertown division of the La Crosse and Milwaukee Railroad Company.

And this deponent further says, that at the time of the execution of the said mortgage he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned; and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage, or in the issuing of any bonds thereunder, or in the sacrifice of any of such bonds.

A. B. VAN COTT.

Subscribed and sworn before me this 14th day of May, 1859.
EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

259 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMP'Y, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

William Allen, being duly sworn, deposes and says, that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to Wm. Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention, or expectation of selling, using, or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes, that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon, and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he received five hundred dollars of said bonds, in full payment of a just debt of five hundred dollars, due from the said railroad company to this deponent, for account of leather furnished to the La Crosse and Milwaukee Railroad Company, by the Wisconsin Leather Company, amounting to $506 24.

260 And this deponent further says, that at the time of the execution of the said mortgage he was not, and has not since been, an officer of the said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage, or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage, or in the issuing any bonds thereunder, or in the sacrifice of any of such bonds.

WILLIAM ALLEN.

Subscribed and sworn before me this 16th day of May, 1859.
EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

261 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
Milwaukee County, ss:

Greenleaf D. Norris, being duly sworn, deposes and says, that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same or the interest thereon.

But this deponent is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he received five hundred dollars of said bonds in payment of a just debt of five hundred dollars, due from said railroad company to this deponent for materials
262 furnished the La Crosse and Milwaukee railroad, and cash paid.

And this deponent further says that at the time of the execution of the said mortgage, he was not, and has not since been, an officer of said railroad company, or otherwise in possession of any power or influence over its affairs; that he was not privy to the execution of the said mortgage, or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion

in the execution of the said mortgage, or in the issuing of any bonds thereunder, or in the sacrifice of any of such bonds.

G. D. NORRIS.

Subscribed and sworn before me this 14th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wis.

263 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others,

STATE OF WISCONSIN,
Milwaukee County, ss:

Cyrus Hawley, being duly sworn, deposes and says, that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, therein mentioned, and commonly called the third mortgage of the La Crosse and Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued, for a reasonable price, or for less than a fair value thereof, or without the design or intention to pay the same, or the interest thereon.

But this deponent is informed and believes, that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at or near the par value of the bonds to be issued thereunder, the bona fide floating and unsecured debt honestly due by the said railroad company, accruing and to accrue.

And this deponent is not informed, save by the said complaint, and does not believe, that the said mortgage was made or accepted with the design or intention or for the purpose of foreclosing, or permitting to be foreclosed, the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon; and the board of directors of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this deponent further says, that he received seven thousand four hundred dollars for the consolidated bonds of the Watertown division of the La Crosse and Milwaukee Railroad Co., and interest thereon; and also received three thousand dollars of said bonds, as executor of the estate of F. W. Hawley, in payment of a just
264 debt of that amount due to the said F. W. Hawley by the said railroad company, for Watertown consolidation bonds.

And this deponent further says, that at the time of the execution of the said mortgage he was not, and has not since been, an officer of said railroad company, or otherwise in the possession of any power or

influence over its affairs; that he was not privy to the execution of the said mortgage or the acceptance of the same, or to the issuing of bonds thereunder, except in the receipt of the bonds above mentioned, and that he was not privy to or cognizant of any fraud or collusion in the execution of the said mortgage or in the issuing any bonds thereunder, or in the sacrifice of any of such bonds.

CYRUS HAWLEY.

Subscribed and sworn before me, this 16th day of May, 1859.

EDWARD P. WHALING,
Notary Public, Milwaukee county, Wis.

265 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Edward P. Whaling, being duly sworn, deposes and says that he is, and has been for several months, secretary of the said railroad company, and knows of the payment of the following bonds issued under the mortgage commonly known as the third mortgage, to the persons and for the debts respectively stated, as follows:

To W. & M. Sayles, three bonds of $100 each, in payment of a debt for timber of $262 44, and interest.

To R. S. Kneeland and others, bonds to the amount of $7,100, for debts for wood and bills payable, to the amount of $7,102 03.

To Cyrus Hawley, bonds to the amount of $7,000, in exchange for that amount of consolidation bonds of Watertown division.

To D. H. Rockwell, and Rockwells & Randall, bonds to the amount of $3,000, in payment of bills payable and exchange for consolidation bonds, Watertown division.

To Bissell & Earing, bonds to the amount of $300, in payment of a debt for lumber of same amount.

To E. Cramer, bonds to the amount of $5,500, in exchange for consolidation bonds, Watertown division.

To H. J. Nazro & Co., bonds to the amount of $3,000, in payment of a debt of $2,638 35 and interest.

To J. S. Rockwell, bonds to the amount of $1,900, in exchange for consolidated bonds, Watertown division, amounting to that sum.

To B. W. Clark, bonds to the amount of $700, in exchange for consolidated bonds, Watertown division, for same amount.

To H. J. Dawes, bonds to the amount of $100, in payment of a debt of $80 90 and interest.

266 To Alexander Mitchell, bonds to the amount of $6,000, in exchange for consolidated bonds, Watertown division, for same amount.

To J. T. Lewis, bonds to the amount of $1,800, in exchange for consolidated bonds, Waterton division, for same amount.

To Garret Vliet, bonds to the amount of $800, in payment of a debt of same amount.

To D. McDonald, bonds to the amount of $2,000, in exchange for consolidation bonds, Watertown division, for same amount.

To W. E. Cramer, bonds to the amount of $500, in exchange for consolidation bonds, Watertown division, for about same amount.

To Caswell & Gaylord, bonds to the amount of $2,000, in payment of a debt for same amount.

To C. R. Austin, bonds to the amount of $1,500, in exchange for consolidation bonds, Watertown division, for same amount.

To C. D. Nash, bonds to the amount of $500, in exchange for same amount of consolidation bonds, Watertown division.

To H. Ludington & Co., bonds to the amount of $1,300, in payment of a debt amounting to $1,306 42.

To E. D. Baker, bonds to the amount of $1,400, in exchange for same amount of consolidation bonds, Watertown division.

To G. D. Norris, bonds to the amount of $400, in payment of a debt of $368, and his check for balance, amounting to $32.

To G. D. Butterfield, bonds to the amount of $1,000, in exchange for consolidation bonds, Watertown division, for same amount.

To L. A. Cole, bonds to the amount of $2 000, in exchange for the same amount of consolidation bonds, Watertown division.

To W. H. Clark, bond to the amount of $100, in exchange for same amount of consolidation bonds, Watertown division.

To James Cady, bonds to the amount of $500, in exchange for same amount of consolidation bonds, Watertown division.

To S. Barnet, and estate of George B. Rodman, bonds to the amount of $200, in payment of interest on bills payable.

To Z. A. Cotton, bonds to the amount of $1,000, in exchange for the same amount of consolidation Watertown division bonds.

To Wisconsin Roofing Company, bonds to the amount of $400, in payment of a debt amounting to $404 75.

To H. Williams, bonds to the amount of $500, in exchange for same amount of consolidation bonds, Watertown division.

To W. G. Gardner, bonds to the amount of $300, in payment for a debt for same amount.

To W. G. Sterling, bonds to the amount of $600, in payment of a debt for the same amount.

To John Cramer, bonds to the amount of $1,000, in exchange for the same amount of consolidation bonds, Watertown division.

To S. B. Scott, bonds to the amount of $1,500, in exchange
267 for the same amount of consolidation bonds, Watertown division.

To Wisconsin Leather Co., bonds to the amount of $500, in payment of a debt amounting to $506 24.

To Samuel Brown, bonds to the amount of $700, in payment of a debt for the same amount.

To Joseph Cary, bonds to the amount of $1,000, in exchange for same amount of consolidation bonds, Watertown division.

To A. F. Snelflohn, bonds to the amount of $800, in payment of debt amounting to $807 20.

To Benton Crandall, bonds to the amount of $400, in payment of a bill payable for about same amount.

To Jonas Eaton, bonds to the amount of $900, in payment of bills payable for about same amount.

To Leander Comstock, bonds to the amount of $200, in payment of a debt amounting to $251 26.

To Cyrus Hawley, for estate of F. M. Hawley, bonds to the amount of $3,000, in exchange for same amount of consolidated bonds, Watertown division.

To A. B. Van Cott, bonds to the amount of $1,000, in exchange for same amount of consolidation bonds, Watertown division.

To John P. McGregor, bonds to the amount of $2,000, in exchange for consolidation bonds, Watertown division, amounting to that sum.

To C. A. Sprague, bonds to the amount of $100, in payment of a debt of about $121 05.

To Nicholas Gerwald, bonds amounting to $500, in payment of a debt of about same amount.

To N. B. Caswell, bonds to the amount of $600, in exchange for same amount of consolidation bonds, Watertown division.

To H. M. Griswold, bonds to the amount of $1,500, in exchange for the same amount of consolidation bonds, Watertown division.

To Capt. L. H. Cotton, bonds to the amount of $700, in payment of a debt of $683 and interest.

To E. W. Dennis, (for estate of C. R. Watkins,) bonds to the amount of $1,800, in exchange for the same amount consolidation bonds of Watertown division.

To R. S. Kneeland, bonds to the amount of $400, in payment of debts due sundry persons of about same amount.

To E. D. Holton, bonds to the amount of $500, in payment for the same amount consolidation bonds, Watertown division.

To Edward Porter, bonds to the amount of $600, in payment of a debt amounting to $545 57 and interest.

To H. Tompkins, bonds to the amount of $500, in payment of a debt amounting to $419 22 and interest.

To J. H. Tweedy, bonds to the amount of $3,700, in exchange for the same amount consolidation bonds, Watertown division.

To Sholes & Simmons, bonds to the amount of $200, in payment of a debt of $157 25 and interest.

And this defendant further says, that he is well acquainted with the books and affairs of the said railroad company, and
268 that he has no doubt that all the aforesaid claims on which the said bonds were so issued were valid bona fide claims against the said company.

And this deponent further says, that on or about the second day of April, 1859, he made his affidavit of the facts above stated in a certain action in the circuit court for Dodge county, wherein George

Morgan and others were plaintiffs, and the La Crosse and Milwaukee Railroad Company, William Barnes, and others, were defendants, for the purpose of showing cause why an injunction on that action should issue or be continued.

And this deponent further says, that on an examination of a copy of the said affidavit, he finds therein a mistake of $400 in the bonds issued to Cyrus Hawley for consolidation bonds; that said Hawley surrendered consolidation bonds for $7,000, on which $400 was due for interest, and received $7,400 of said third mortgage bonds.

And this deponent further says, that in some instances he himself settled the accounts of persons above mentioned and delivered them said third mortgage bonds in payment therefor, and that in other instances the arrangement for payment in the said third mortgage bonds was made by other officers of the company, and upon their direction deponent delivered the bonds; that the delivery of said bonds was often some time after the arrangement had been made for their delivery; that it appears by deponent's entries that some of them were delivered before the first of January last, and many of them after, but that the date of delivery does not indicate the date of agreement for their delivery.

And this deponent further says, that he has in his custody ——— dollars of said bonds, which he knows to have been appropriated to the payment of debts, and the balance of which he supposes to be so appropriated, and that he is informed and believes that there are in the hands of other persons some of the said bonds, charged to the Milwaukee office for the purpose of paying debts, but what amount he is unable to state.

And this deponent further says, that since he made his said former affidavit, he has paid to R. S. Kneeland, for divers persons, one thousand dollars of said third mortgage bonds for debts due to those persons, for so much wood long since furnished to the said company through said R. S. Kneeland, and which was a just debt against said company.

And this deponent further says, that no papers have been served upon this deponent for said company in this action, and that none have been served upon any other officers of the company to his knowledge or belief.

And this deponent further says, that the copy of a resolution of the board of directors, hereto annexed, marked A, is a correct copy, from the minutes of the board of directors, kept in the office of the said company, in the city of Milwaukee: that it was the custom,
269 when a meeting of the board was held elsewhere than Milwaukee, for the assistant secretary or secretary *pro tem.* officiating at such meeting to certify the proceedings of such meetings to the secretary at Milwaukee, and thereupon for the secretary to enter such proceedings upon the book of minutes of said board of directors, in the office of said company in Milwaukee, and that the said resolution was entered upon the said book of minutes in Milwaukee, with the other proceedings of the meeting of the 11th of August, 1858.

And this deponent further says, he was present at a meeting of

said board of directors held at the office of the said company on the 13th day of October, 1858, in the city of Milwaukee, when, amongst other proceedings, those contained in the paper hereto annexed, marked "B," took place, and that the same is a true statement of what took place in that behalf, and that the same is a true extract from the said book of minutes.

And this deponent further says, that when N. P. Stanton was last in Milwaukee during last winter, and, to the best of deponent's recollection and belief, some time in the month of February last, the plaintiff in this action applied at the office of the said company in Milwaukee for leave to examine the records and books of the said company, and was permitted and aided by deponent to examine the same to the said plaintiff's satisfaction, by order of the said Stanton, and that the said plaintiff did in fact then so examine the same; that once afterwards, and somewhere about six weeks thereafter, the said plaintiff applied for leave to examine the same again, and was refused by deponent in obedience to orders of the said Stanton, as deponent then stated to said plaintiff, and that at no other time, to the knowledge or belief of this deponent, has the said plaintiff applied at the office of the said company in Milwaukee for access to the books and records of said company, and the record or minutes of the proceedings of the said board of directors to this deponent, or to any one else; that during all that time, and since the month of October last, this deponent has been secretary of the said company, and that this deponent has upon no other occasion, except the one above stated, denied the said plaintiff's access to the said books, records, and minutes, or any of them, since the said plaintiff so inspected the same.

And the deponent further says, that since the making of his said former affidavit, he has received from William E. Smith, one of the directors of the said company, two thousand dollars of Watertown consolidation bonds, received by him from A. S. Pritchard in exchange for two thousand dollars of said third mortgage bonds, upon an arrangement long ago made.

EDWARD B. WHALING.

Subscribed and sworn to before me this 16th day of May, 1859.

JAS. G. JENKINS,
Notary Public, Milwaukee, Wis.

270 *Document A.*

The president submitted to the board a supplemental trust deed to William Barnes, trustee, by which the La Crosse and Milwaukee Railroad Company mortgages or conveys in trust all the rights and lands granted to the La Crosse and Milwaukee Raiload Company by the United States, and by the legislature of the State of Wisconsin, and all other property, rights, and privileges, to secure the bonds issued in pursuance of said trust deed called third mortgage bonds, which said supplemental trust deed was read, examined, approved, ratified, and confirmed; and thereupon the same was, on motion,

Resolved, That the said supplemental trust deed be executed by the president and secretary in due form, and duly recorded on the minutes in the office of the company at Milwaukee, and in the office of the secretary of state of Wisconsin, and when duly recorded, delivered to the said William Barnes, as trustee, with all the powers conferred by virtue of the said deed.

Which was unanimously adopted.

LA CROSSE AND MILWAUKEE RAILROAD OFFICE,
Milwaukee, May 10th, 1858.

I hereby certify that the foregoing is a true copy of a portion of the minutes of the board of directors of this company at a meeting held on the 11th of August, 1858, in the city of Albany, N. Y., as appears of record in this office.

EDWARD P. WHALING,
Secretary.

B.

The secretary was directed to read the minutes of meetings of the board of directors, held at the following dates, viz: the minutes of the meeting of the board held at the office of the company, in the city of Milwaukee, on the 2d day of June, 1858, and of the several meetings of the board held in the office of the company, in the city of Albany, on the 8th, 15th, and 26th of June, 11th of August, and 3d, 6th, and 18th of September, and in the city of New York on the 29th of June, and the 8th, 9th, 15th, 16th, and 27th July, and 6th of August, and 22d September, 1858. Whereupon the secretary read the minutes as above directed.

On motion, the resolution passed at the evening session on the 16th July, 1858, in reference to the cancellation of the two per cent. convertible bonds, be corrected by prefixing the word "vice" to the word president, so that it shall read vice president.

Correction adopted as proposed.

Resolved, That the proceedings of each and every of said
271 meetings, as corrected, be and they are hereby approved, ratified, and confirmed.

OFFICE OF THE LA CROSSE & MIL. R. R. CO.,
Milwaukee, May 10th, 1859.

I hereby certify that the foregoing is a true copy of a portion of the minutes of the board of directors of this company, at a meeting held on the 12th of October, 1858, in the city of Milwaukee, as appears of record in this office.

EDWARD P. WHALING,
Secretary.

272 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others.

COUNTY OF MILWAUKEE, *ss:*

Stoddard Judd, being duly sworn, deposes and says, that on or immediately after the execution of the deed whereof a copy is hereto annexed marked A, he received from the said railroad company third mortgage bonds to the amount of five hundred and fifty thousand dollars, to apply towards the execution by him of the trusts in said deed; that he has used some of them pursuant to the trusts of said deed, and holds the residue subject to the trust of said deed, to which he is ready and willing to apply them; that he claims no personal interest therein, and acts in and about the said trust in the said deed contained, as an impartial holder, for the benefit of such of the farm mortgage stockholders as may be willing to receive them, pursuant to the trust in said deed contained.

And deponent further says, that since the 4th day of April, 1859, he has received and executed a contract, extending the time for the execution of said trust, a copy of which is hereto annexed, marked B, and holds the said bonds in pursuance of said last mentioned contract, and solely for the purposes expressed therein.

STODDARD JUDD.

Sworn to before me, this 16th of May, 1859.
JAMES G. JENKINS, *Notary Public.*

Document A.

Whereas the board of directors of the La Crosse and Milwaukee Railroad Company, on the sixth day of January, 1859, adopted a resolution, of which the following is a copy:

273 *Resolved*, That the president of this company be, and he is hereby, authorized and directed to assign to Stoddard Judd, of Fox Lake, Wisconsin, in trust for the uses and purposes hereinafter mentioned, third mortgage bonds to the amount of five hundred and fifty thousand dollars, being part of six hundred thousand dollars of said third mortgage bonds, heretofore, by resolution of this board passed October 23d, 1858, directed to be set apart to provide for the farm mortgage bonds, and relieve the mortgage stockholders.

1st. The said Stoddard Judd, trustee, to deliver to any farm mortgage stockholder third mortgage bonds, in amount equal to one-half of the amount of mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him, binding this company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock; the said trustee to cancel and surrender to this company the stock and obligation of this company so surrendered by the stockholders.

2d. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in said trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd in trust, that shall not be used for the above first mentioned purposes by the 1st day of May, 1859. And it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust, and the terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves of the provisions for their relief and benefit intended to be made by this resolution, and the assignment to be made by virtue hereof; and this trust to be executed only in case such farm mortgage stockholders shall avail themselves of the same on or before the 1st day of May next:

Now, therefore, this indenture, made the fourth day of February, 1859, by and between the La Crosse & Milwaukee Railroad Company, a corporation created by and under the laws of Wisconsin, party of the first part, and Stoddard Judd, esq., of Fox Lake, in the State of Wisconsin, party of the second part, witnesseth: That the said party of the first part, in consideration of the premises and one dollar to it in hand paid, does hereby sell, assign, transfer, and convey to said party of the second part, third mortgage sinking fund bonds of said company to the amount of five hundred and fifty thousand dollars, ($550,000,) in trust for the uses and purposes hereinafter mentioned.

First. The said Stoddard Judd, trustee, is to deliver to a farm mortgage stockholder third mortgage bonds in amount equal to one-half of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding the company to pay the interest on his mortgage and note, and to make a
274 dividend of ten per cent. on such stock, the said trustee to cancel and to surrender to this company the stock and obligations of this company so surrendered by the stockholders.

Second. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd in trust, that shall not be used for the above first mentioned purpose, by the first day of May, 1859; and it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust, and terms thereof, and to use all reasonable endeavors to enable all farm mortgage stockholders to avail themselves of the provisions for their relief and benefit, intended to be madeby this resolution, and the assignment to be made by virtue hereof; and this trust to be executed only in case said farm mortgage stockholders shall avail themselves of the same on or before the first day of May next. The said party of the second part hereby accepts this trust, and promises to faithfully and diligently perform the same.

In witness whereof, the said railroad company has hereto affixed

its corporate seal, and caused the same to be subscribed by its president; and the said Stoddard Judd, party of the second part, has subscribed his name and affixed his seal.

[SEAL.] LA CROSSE & MILWAUKEE R. R. CO.,
By N. P. STANTON, *President.*
[SEAL.] STODDARD JUDD.

B.

Whereas the board of directors of the La Crosse and Milwaukee Railroad Company, on the 16th day of July, A. D. 1858, adopted a resolution, of which the following is a copy :

On motion, *Resolved*, That there be, and is hereby, set apart and appropriated five hundred thousand dollars ($500,000) of the third mortgage bonds of this company, to be used solely (if so many shall be necessary) in retiring the farm mortgage bonds so called, or in securing the performance of the covenants of this company with the farm mortgage stockholders, and that the above amount, to wit, five hundred thousand dollars of said third mortgage bonds, be placed in the hands of the committee for funding the floating debt by the president, to be used solely for the above purpose.

And whereas also the said board of directors, on the sixth day of January, 1859, adopted a resolution, of which the following is a copy :

Resolved, That the president of this company be, and he is hereby, authorized and directed to assign to Stoddard Judd, of Fox Lake, Wisconsin, in trust for the uses and purposes hereinafter mentioned, third mortgage bonds to the amount of five hundred and fifty thousand dollars, being part of six hundred thousand dollars of
275 said third mortgage bonds heretofore, by resolution of this board, passed October 23, 1858, directed to be set apart to provide for the farm mortgage bonds and relieve the mortgage stockholders.

1st. The said Stoddard Judd, trustee, to deliver to the farm mortgage stockholder third mortgage bonds, in amount equal to one-half of the amount of the mortgage stock held by such stockholder, on surrender by him of the obligation or contract held by him binding this company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock ; the said trustee to cancel and surrender to this company the stock and obligations of this company so surrendered by the stockholders.

2d. To cancel and return to William Barnes, of Albany, the trustee named in the trust deed securing said third mortgage bonds, or his successor in said trust, all of the said five hundred and fifty thousand dollars of third mortgage bonds so assigned to said Stoddard Judd, in trust, that shall not be used for the above first-mentioned purpose by the first day of May, 1859.

And it shall be the duty of said Stoddard Judd to give reasonable notice to all farm mortgage stockholders of this trust, and the terms thereof, and to use all reasonable endeavors to enable all farm mort-

gage stockholders to avail themselves of the provision for their relief and benefit intended to be made by this resolution and the assignment to be made by virtue hereof, and this trust to be executed only in case of such farm mortgage stockholders shall avail themselves of the same on or before the first day of May next.

And whereas also the said five hundred and fifty thousand dollars of third mortgage bonds of said company have been duly assigned to said Stoddard Judd in accordance with said last above-recited resolution:

And whereas also the said board of directors, on or about the 8th day of March, 1859, adopted a resolution by which the said farm mortgage stockholders were allowed to avail themselves of the benefits of said trust on or before the 1st day of May, 1860:

Now, therefore, this indenture, made the 12th day of Ma.. 1859, by and between the La Crosse and Milwaukee Railroad Company, a corporation created by and under the laws of the State of Wisconsin, and Stoddard Judd, of Fox Lake, in the State of Wisconsin, witnesseth: That the said La Crosse and Milwaukee Railroad Company, for value received, in consideration of the premises, and of one dollar to it in hand paid, the receipt of which is hereby confessed and acknowledged, and does hereby sell, assign and transfer the said five hundred and fifty thousand dollars of third mortgage bonds to said Stoddard Judd, and ratify, approve and confirm the said assignment thereof already executed to him in trust for the uses and purposes specified in said resolution of January 6th, 1859, with the modification expressed in the said resolution passed by said board on or about the 8th day of March, 1859, that the time within which the said farm mortgage stockholders shall be allowed to receive
276 said bonds or the stock in a new organization is hereby extended to the 1st day of May, 1860, in accordance with the said resolution of March 8th, 1859.

It is hereby further stipulated and agreed by said Stoddard Judd, that in case of a sale by virtue of or on foreclosure of the trust deed or mortgage, or supplement by which said third mortgage bonds are secured, and the organization of a company on such sale or foreclosure, said Stoddard Judd shall surrender all of the said third mortgage bonds remaining in his hands undelivered at the time of such sale, and receive in lieu thereof any equal and proportionate amount of stock in the said company which may be organized, on such sale or foreclosure, which stock shall be held by the said Judd on the same terms and conditions and for the same uses and purposes as he now holds or has held said third mortgage bonds, and such stock shall be delivered to said farm mortgage stockholders by said Stoddard Judd to the amount of fifty per cent. of the mortgage stock held by such stockholder on surrender by him of the obligation or contract held by him binding the said La Crosse Company to pay the interest on his mortgage and note, and to make a dividend of ten per cent. on such stock as stipulated in said resolution of January 6th, 1859, provided such surrender is made, and said farm mortgage

stockholders avail themselves of the benefit of this trust on or before, but not after, the 1st of May, 1860.

In witness whereof, the said railroad company has hereto affixed its corporate seal and caused the same to be subscribed by its president; and the said Stoddard Judd, party of the second part, has subscribed his name and affixed his seal.

La Crosse and Milwaukee Railroad Company, by
(Signed) N. P. STANTON,
President.
STODDARD JUDD.

277 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others.

CITY AND COUNTY OF ALBANY, N. Y., *ss:*

William Platt, being duly sworn, doth depose and say that he is one of the directors of the La Crosse & Milwaukee Railroad Company; that he denies the charges of any fraudulent conduct on the part of this deponent as such director, or on the part of any of the directors of said company, to the knowledge or belief of this deponent; that he attended a meeting of the directors of said company, at the city of Milwaukee, in the month of October last, when the said railroad was so far completed as to enable the train of cars to reach the Mississippi river at La Crosse; that several meetings were held while at Milwaukee by the directors for the transaction of business in relation to the affairs of said company; that the most important matters discussed and considered was to continue the direction and control of the said railroad in the hands of the stockholders and for their benefit, in the hope that the company might eventually, from the earnings of the road and from the land grant, relieve itself from embarrassments; that it was hoped, when the road was completed to La Crosse, the governor of Wisconsin would no longer withhold his consent to convey to the company three hundred thousand acres of land which it was entitled to for the completion of sixty miles of the line of railroad from Portage City to the Junction or village of Tomah.

And this deponent further says that while in Milwaukee, in the said month of October last, a proposition was submitted to the board of directors by which a sufficient amount of the earnings of the said road should be applied to the payment of the interest of such third mortgage bonds as had been issued or might be issued, and that by using the said third mortgage bonds for funding the coupons due and to become due upon the land grant bonds, and also in payment
of such debts as were indispensable for right of way and other
278 purposes, the stockholders would continue to hold the road,
and a foreclosure upon any of the mortgages upon said road could be prevented; that such proposition was in writing, specifying its de-

tails, and approved and adopted by the said board of directors, and after such approval and adoption was submitted to Selah Chamberlain, the lessee or mortgagee in possession of the said railroad, and after consideration was approved and accepted by the said Chamberlain; and such proposition and arrangement was regarded and spoken of as being settled and agreed to and satisfactory to the said Chamberlain and to the directors. That this deponent accompanied the excursion to St. Paul in the said month of October last, when such arrangement was frequently spoken of and regarded as settled.

That the said Chamberlain represented that he was obliged to remain in Minnesota about ten or twelve days, after which he would return and meet the directors at Albany, and consummate the arrangement agreeably to the resolution and proposition of the directors submitted at Milwaukee.

That this deponent attended a meeting of the directors at Albany, when the said Chamberlain arrived on his return from Minnesota in the month of November last, and expected to have completed said arrangement, when this deponent heard with regret that the said Chamberlain could not, and declined to enter into such arrangement.

That this deponent is of opinion the resources and means of said company have been exhausted, and every effort has been made to prevent a sale by the land grant mortgage or other encumbrances upon the said railroad; that the third mortgage bonds have been disposed of in good faith in payment of debts, and for the best interests of the company; that this deponent received from the said company four thousand dollars in amount of the said third mortgage bonds, which he received in exchange for a similar amount of legitimate unsecured bonds of said company, and which this deponent shortly after sold in the city of Albany; that this deponent now holds five thousand eight hundred dollars in amount of said third mortgage bonds, which he purchased from a broker in the city of New York; that this deponent is not and has not been the owner of any other of the said third mortgage bonds; that he has no knowledge of any of said third mortgage bonds being placed or disposed of for the purpose of foreclosing or controlling the future management of the said railroad, nor has this deponent any knowledge of any fraudulent or improper arrangement in relation to the said third mortgage bonds in any manner or shape whatever.

WILLIAM PLATT.

Taken, subscribed and sworn to before me this 12th day of May, A. D. 1859, at the city of Albany, N. Y.

Witness my hand and seal officially.

[SEAL.] R. J. HILTON,

Commissioner for Wisconsin at Albany, N. Y.

279 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others.

STATE OF NEW YORK,
Albany City and County, ss:

Albert C. Gunnison, being duly sworn, saith that he is and was, at the time of the passage of the above resolution, a director of the La Crosse and Milwaukee Railroad Company, and that this deponent was present at said meeting of the said board of directors on the 16th day of July, 1858, and that a resolution, of which the above is a copy, was duly passed by said board of directors, at the time and place above set forth, and that said five hundred thousand dollars of third mortgage bonds were delivered to said committee in conformity to said resolution, and that this deponent was secretary pro tem. of said meeting.

A. C. GUNNISON.

In the city of Albany, State of New York, on the 12th day of May, 1858, by the said Albert C. Gunnison, subscribed and sworn to before me, Edward Wade, a commissioner in and for said State of New York, appointed by the governor of the State of Wisconsin to take and certify depositions, affidavits, &c., to be used in and for the State of Wisconsin.

[SEAL.] In witness whereof, I hereto subscribed my name, and hereto affixed my seal of office, this 13th day of May, 1859.

EDWARD WADE,
Commissioner of Wisconsin for State of New York.

Meeting of the directors of the La Crosse and Milwaukee Railroad Company, at the La Farge House, New York city, July 16th, 1858. Evening session.

Present: N. P. Stanton, president: Wm. A. Guest, J. P. McGregor, Wm. E. Smith, A. Noxon, G. W. Luther, A. C. Gunnison.

On motion, *Resolved*, That there be, and is hereby, set apart and appropriated five hundred thousand dollars of the third mort-
280 gage bonds of this company, to be used solely (if so many shall be necessary) in retiring the farm mortgage bonds, so called, or in securing the performance of the covenants of this company with the farm mortgage stockholders, and that the above amount, to wit, five hundred thousand dollars of said third mortgage bonds be placed in the hands of the committee for funding the floating debt by the president, to be used solely for the above purpose.

[SEAL.] A copy. A. C. GUNNISON,
Sec'y pro tem.

281 At a meeting of the directors of the La Crosse and Milwaukee Railroad Company, held this day at the office of the company in Albany, 8th March, 1859.

Present: N. P. Stanton, president; G. W. Luther, A. Noxon, Wm. Platt, A. C. Gunnison.

Resolved, That the time within which the farm mortgagors shall and may be allowed to receive third mortgage sinking fund bonds, according to the terms of the assignment to Dr. Stoddard Judd, be, and the same is hereby, extended to the first day of May, A. D. 1860; and the farm mortgagors of the La Crosse and Milwaukee Railroad Company shall be, and are hereby, allowed the right and privilege of receiving said bonds until the first day of May, 1860, but not after said day, and that all former resolutions or acts of the board inconsistent or repugnant to this resolution be, and the same are hereby, repealed, annulled, and abrogated.

A copy.

A. C. GUNNISON,
Secretary pro tem.

Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others.

STATE OF NEW YORK,
Albany City and County, ss:

George W. Luther, of said city, being duly sworn, saith that he was a director of the La Crosse and Milwaukee Railroad Company on the 8th day of March, 1859, and that a resolution, of which the above is a copy, was passed and adopted by the board of directors of said railroad company on the said 8th day of March, 1859; and that deponent was present and voted at said meeting, and that said resolution was duly and unanimously adopted at that meeting; and further saith not.

G. W. LUTHER.

In the city of Albany and State of New York, on this 12th day of May, A. D. 1859, by the said George W. Luther sworn to before me, Edward Wade, a commissioner in and for said State of New York, duly appointed and commissioned by the governor of the State of Wisconsin to take and certify depositions, affidavits, &c., to be used in the State of Wisconsin.

In witness whereof, I have hereunto subscribed my name and hereto affixed my seal of office this 12th of May, A. D. 1859.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

282 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others.

CITY AND COUNTY OF ALBANY, *ss:*

William A. Guest, being duly sworn, doth depose and say that he resides in the city of New York, and is a stock and bond holder of the La Crosse and Milwaukee Railroad Company, and one of the directors of the said company; that in the month of June last this deponent was elected such director, and appointed vice-president of said company; that he was informed a third mortgage for the sum of two millions had been determined upon by the directors of said company, and bonds to such an amount to be thereupon issued for the purpose of funding the floating debt and relieving the embarrassments of the company as far as the same would extend, which this deponent approved as the only resource, and the same was done in good faith, and for the true interests of the company; that on or about the day of last this deponent published in the New York Tribune, Times, Express, and Evening Post notices that such third mortgage bonds would be given for any legal and valid debts against the said company; that a finance committee had been appointed by the said directors, consisting of this deponent, Alfred Noxon, and Albert C. Gunnison, for the purpose of attending to the financial affairs of said company in the city of New York, to negotiate and settle debts and obligations of said company, to raise funds in any practicable way, and to do such acts and measures in as full and ample manner as the directors could legally do; that great efforts were made to pay the coupons or interest due on the first of August last upon the land grant bonds, and after providing for raising a large amount of money for such purpose, eventually failed to accomplish the same, and the said directors and the committee were unable to pay such coupons due on the first day of August last; that in consequence of such failure the land grant bonds and the credit of the said company were entirely prostrated; that there was found to be due to
283 Selah Chamberlain, on the first day of August last, the sum of $20,000, exclusive of bonds which he was to receive; that said Chamberlain had the right to abandon his contract to complete the said railroad to La Crosse if the said contract was not fulfilled on the part of the said company; and to induce and require the said Chamberlain to complete the said railroad to La Crosse, a note was given to said Chamberlain for twenty thousand dollars secured by a pledge of third mortgage bonds to the amount of $400,000; that such bonds were not regarded as good security in consequence of the previous incumbrances and the unfinished condition of the said road; and by reason of which a large amount was pledged as above stated, with full confidence that upon the completion of the road the company would be able to redeem and take up said bonds; that such note

and pledge of bonds was made in good faith, and without the remotest intention to forfeit said bonds, or to place them in the hands of said Chamberlain or any other person for the future control of the road, or for any fraudulent purpose whatever.

That after the failure to pay the coupons of the said land grant bonds due on the first day of August last, notice was published in the daily newspapers in New York city that the committee would fund such unpaid coupons with the said third mortgage bonds, giving such bonds at the rate of seventy per cent. for such coupons. That this deponent attended regularly the office of the company in the city of New York for the purpose of settling debts and obligations, and did settle and discharge a large amount with such third mortgage bonds, agreeably to the published notice.

That this deponent did not attend the meeting of the directors at Milwaukee, in the month of October last, when the said railroad was completed and the event celebrated by an excursion to St. Paul, in Minnesota, but he shortly thereafter heard with much gratification of an arrangement made with Selah Chamberlain to enable the directors to redeem the $400,000 bonds pledged to him, and also to enable the stockholders to retain the control of said company, and prevent a foreclosure or sale under any of the incumbrances upon said railroad, which the deponent has no doubt was made in good faith and with a full expectation that it would be carried out.

That this deponent attended a meeting of said company at the city of Albany, when the said Chamberlain was present and announced his inability to comply with or consummate his agreement and arrangement, made in Milwaukee in October last, by which the interest was to be provided for upon said third mortgage bonds, and the $400,000 pledged as aforesaid to be redeemed.

That this deponent exerted himself to raise money to redeem said bonds and to postpone the sale, but without effect; that the small amount of the receipts of the said road after its completion disappointed all interested in said railroad, and the general depre-
284 ciation of all western railroads entirely prostrated all hopes of being able to continue the existence of the said company.

And this deponent further saith that in the disposition of the said bonds by him or his associate director the same has been done in good faith and to the best advantage for such depreciated security; that pledges of said bonds were only made to prevent still greater sacrifices, and no sale, disposition, or pledge of said third mortgage bonds was made, to the knowledge or belief of this deponent fraudulently, or for the purpose of future control of the railroad or the company, or with the design to sell out the said company, and to cut off stockholders or sacrifice their interests in any manner whatever.

That such third mortgage bonds, to the best of the knowledge and belief of this deponent, were disposed of fairly in good faith, and in the payment of debts and obligations at bar, and under the resolutions and directions of the board of directors.

This deponent further says that he is the owner and holder of twenty thousand dollars of the said third mortgage bonds, which he received

in exchange for a similar amount of the unsecured bonds of said company which were valid legal obligations of the said company; and that deponent received ten thousand dollars of said bonds to exchange with a third person in addition to said twenty thousand.

WILLIAM A. GUEST.

In the city of Albany, in the State of New York, on this 12th day of May, 1859, before me, Edward Wade, a commissioner in and for the said State of New York, duly appointed and commissioned by the governor of the State of Wisconsin to take and certify depositions, affidavits, &c., to be used in said State of Wisconsin. Sworn to by the said Wm. A. Guest.

In witness whereof, I have hereunto set my hand and here-
[SEAL.] to affixed my seal of office, this 12th day of May, A. D. 1859.

EDWARD WADE,
Commissioner of the State of Wisconsin, in and for the State of New York.

285 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others,
against
NEWCOMB CLEVELAND.

STATE OF NEW YORK,
Albany City and County, ss:

Nehemiah P. Stanton, of said city, county and State, one of the defendants in the above entitled cause, being duly sworn, deposes and says, that he has been since the 9th day of April, 1858, president of the La Crosse and Milwaukee Railroad Company, a company chartered by the legislature of the State of Wisconsin. This deponent also says that he accepted his official position, and entered upon its duties, with the full belief on his part that, by judicious action and expected assistance, the affairs of the company could be saved and retained in the hands of the stockholders, and with this object in view he presented for the consideration of the board of directors, on or about the first day of June, A. D. 1858, a preamble and resolution, of which the following is a full and correct copy:

"The president presented the following preamble and resolution, which were unanimously adopted:

"Whereas a large floating debt has accumulated for rolling stock and materials furnished and provided, and labor performed, for the La Crosse and Milwaukee Railroad Company, which remains unpaid, and is unsecured by any mortgage or other security upon the road, or other property of said company: And whereas a large number of persons along the line of the road in Wisconsin have mortgaged their farms to the company, to aid in the construction; which farm mortgages have been used by the company with the stipulation on

its part to pay the interest accruing thereon, and a failure to pay which interest would produce great distress among the farm mortgage stockholders:

"And whereas it is necessary that immediate provision be made for paying off such floating debt of the company, and for the payment of the accrued and accruing interest on such farm mortgages, and the other just indebtedness of the company, and also to pro-
286 vide for taking up and cancelling said farm mortgages when deemed expedient: therefore,

"*Resolved*, That an issue of bonds of the said company be, and is hereby, authorized to the amount of two millions of dollars, to be secured by a mortgage upon the entire line of the road from Milwaukee to La Crosse, including all depots, depot grounds, lots, buildings, stations, materials, line of track, improvements of every kind, all rolling stock and locomotives, and all real and personal property appertaining to the said line of railroad; said bonds to be in the sums following: one thousand (1,000) bonds in sums of five hundred dollars each; and fifteen hundred (1,500) bonds in sums of one thousand dollars each; payable in thirty years from date, bearing interest at the rate of seven per cent. per annum from the first day of July, 1858, payable semi-annually, after one year, at Albany Exchange Bank, at Albany, the first payment of interest to be made on the 1st day of July, 1859; said bonds to be printed in the usual form with coupons, and the mortgage securing the same to be executed by the president and secretary of said company to Wm. Gould, of the city of Albany, trustee for said bondholders, and providing in case of death, resignation, or removal of said trustee, for the appointment of a successor, on application to one of the justices of the supreme court of the State of New York; also a sinking fund to be provided for the gradual payment of said bonds, by the sum of twenty-five thousand dollars annually, ($25,000,) the first payment to be made on the 1st day of July, 1861. Said trustee shall for the payment of the sinking fund advertise for the purchase of said bonds, by giving ten days' notice in New York, Albany and Milwaukee newspapers; said mortgage to be executed, subject to nine hundred and twenty-two thousand dollars ($922,000) in outstanding bonds secured by a first mortgage upon the eastern division; also to Milwaukee city bonds, ($314,000;) also one million dollars ($1,000,000) in second mortgage on eastern division, and $4,000,000 mortgage upon the line of railroad from Portage City to La Crosse, and subject to the second mortgage on the road from Portage City to La Crosse, and from junction near the village of Tomah to the terminus on lake or river St. Croix."

This deponent further says, that the board of directors unanimously adopted the foregoing resolution, and subsequently, to wit: on the 21st day of June following, they executed to Wm. Barnes, of Albany, a trust deed or mortgage, conveying the entire road of the company; by the conditions of that deed, the company were to make to the said trustee any further conveyances that said trustee might ask, in order to make more secure the bonds issued and to be issued, under and by virtue of said trust deed. In accordance with said provi-

sion, and upon the written request of said trustee, a supplementary deed was executed to said trustee on the 11th day of
287 August, A. D. 1858. The only and sole object in executing said deeds of trust by this deponent, in accordance with the resolutions of the board of directors, was as expressed in the resolution authorizing its execution.

This deponent further says, that the bonds issued under said third mortgage, amounting to two millions of dollars, have been legally and judiciously disposed of, as far as could be, in strict accordance with the said resolution authorizing their issue, and for the best interests of the company, to the best information, knowledge, and belief of deponent.

This deponent further saith that, to the best of his knowledge and belief, only forty-three thousand five hundred dollars ($43,500) of said bonds have been exchanged with directors of said company, and that whenever such exchanges have been made, they have been made in good faith, and upon the same equitable grounds that exchanges have been made with other creditors.

This deponent further saith, that in no instance has he hypothecated said bonds with the express undertaking that they should not be redeemed, or that they should be forfeited to the lenders of the money.

This deponent further saith, that he has never at any time sold any of said bonds, or ever offered to sell them, but that they have been hypothecated on loans, and as collateral security in some cases, at the rate of five, and in others at the rate of ten per cent.

This deponent further saith, that he is not and never has been the owner of any of said third mortgage bonds, and that he has no interest whatever in any of them.

This deponent further saith, that he denies that on the 1st day of June, 1858, the said railroad company was utterly destitute of any revenue resources or present means, and that there was no human probability that the said railroad company would be enabled for the three years then next ensuing to take possession of said railroad, as alleged in the complaint herein. This deponent also denies that the credit of said company was so utterly prostrate, that it would not be in possession of any funds whatever to pay interest on bonds or other debts, and that bonds or other evidences of indebtedness against the said company could only be sold in the market for a nominal sum, and that such alleged facts were known to the directors as alleged in said complaint.

This deponent further saith, that for himself personally, and on his knowledge, information and belief as to the other directors, he denies all charges in said complaint of betraying any trust as director or directors of said road, or designing to defraud the stockholders or any other person or persons, and that said denial as to deponent is full and explicit and as broad as the charges, and that all such charges are false and slanderous. This deponent further saith, that he was not present at the meeting in Albany, on or about the 15th
288 day of June, when an alteration was made as to the time of

payment of the first coupons on said third mortgage bonds, but deponent believes that such change was honestly made for the purposes stated in the affidavit of D. V. N. Radcliffe.

Deponent further saith, that annexed hereto, marked "A," is a copy of the annual report of said company to the stockholders, for the year ending Dec. 31st, 1858, and that said schedule "A" will show a portion of the efforts made by this deponent to save the said railroad to the stockholders, and redeem its credit and maintain the same.

Deponent further saith, that he has been shown a copy of the affidavit of Moses Kneeland, made in this cause, and has read the same, and that the statement therein that this deponent advocated the issue of bonds and a third mortgage for the purpose of wiping out the stock and floating debt of said company, and for the sole purpose of suffering the same to be foreclosed, and that the design was not to attempt the payment of the coupons on said third mortgage, but to foreclose for the purpose of wiping out the stock and floating debt of said company, is wholly untrue, except that deponent did advocate the issue of said third mortgage, but deponent never had any such conversation with said Kneeland, and it is not true that said mortgage was made for any such purpose.

Deponent further saith, that the directors of said company never proposed to Selah Chamberlain that if he would pay over to them from the earnings of said company one thousand dollars per month, they would not issue the said third mortgage bonds; that the agreement of said Chamberlain and the negotiations between him and the company is fully set forth in the affidavit of Hon. D. V. N. Radcliffe.

Deponent further saith, that he never told said Kneeland that if said Chamberlain had accepted said proposition, the third mortgage bonds would not have been issued, as stated by said Kneeland in his affidavit; that deponent never told said Kneeland that the directors had made up their minds to use the said third mortgage bonds for the purpose of having a foreclosure, and thus wipe out and destroy the said stock and floating debt of said company, or that they had made up a party of Russell Sage, William Watson, and others, and they desired to bring into the plan persons in Milwaukee, including said Kneeland, or that there was a great deal of money to be made out of it, and that they did not wish said Kneeland to be fighting them, as stated in the affidavit of said Kneeland.

Deponent further saith, that he never stated to said Moses that he could have any amount of the bonds he would name, almost, put up as collateral at five cents on the dollar, with the understanding that they should be forfeited and thus become said Kneeland's, as
289 stated in said affidavit of said Kneeland; and that deponent believes that if he had made any such proposition to said Kneeland, he would have accepted the same.

Deponent further saith, that he never made any such statement to said Moses as to coupons on said third mortgage bonds, as is stated by said Kneeland in his said affidavit.

N. P. STANTON.

Subscribed and sworn to before me, in the city of Albany, N. Y., on this 3d May, A. D. 1859. Witness my hand and seal officially.
[SEAL.] R. J. HILTON,
Commissioner for Wisconsin, at city of Albany, N. Y.

290 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES, and others.

STATE OF NEW YORK,
Albany City and County, ss:

Nehemiah P. Stanton, being duly sworn, saith, that he is president of the La Crosse & Milwaukee Railroad Company, and has been such president for the past year; that this deponent is familiar with the execution of the third mortgage executed by said company to William Barnes, defendant herein, and with the disposition of the bonds issued by said company under said third mortgage.

Deponent further saith, that five hundred and fifty thousand dollars of said bonds were assigned to Dr. Stoddard Judd, in trust, to deliver to the farm mortgagors of said La Crosse & Milwaukee Railroad Company on surrender by them, and in satisfaction of the agreement of said company to pay the interest on the farm mortgages negotiated by said company to the amount of fifty per cent. of such mortgages, and the accompanying stock certificate to be surrendered also with said agreement, on or before the first day of May, 1860, to which period the said time has been extended.

Deponent further saith, that on or about the 16th day of July, 1858, the board of directors of said company set aside, by resolution, five hundred thousand dollars of said third mortgage bonds, for the purpose of securing the performance by said railroad company of its covenants and agreements with the farm mortgage stockholders, and put the said bonds in the hands of a committee of said board to be used solely for that purpose.

Deponent further saith, that the time within which the said farm mortgagors should be allowed to receive said third mortgage bonds was extended by the board of directors of said company to
291 the 1st day of May, 1860, on or about the 8th day of March, 1859. Deponent further saith, that said third mortgage bonds are now so held by said Judd, with the exception of such as may have been taken by the farmers in pursuance of the assignment to said Judd.

Deponent further saith, that four hundred thousand dollars of said third mortgage bonds were pledged, according to deponent's best information, knowledge, and belief, as collateral to a note of said company to Selah Chamberlain, the contractor, who has agreed to build the road from the junction to La Crosse for $1,500,000 in land grant bonds, which, as deponent is informed and believes, were

guaranteed to said Chamberlain at thirty per cent.; that on a settlement with said Chamberlain, on or about the 5th day of August last, for the estimate of work at that time, the sum of $20,000 was found to be due to the said Chamberlain; that Chamberlain demanded payment of said sum; that it still required two or three months to complete the road to La Crosse, and it was of vast and vital importance to the interests of said company that the road should be completed, and it was feared that unless said sum was secured to said Chamberlain he might fail or neglect to complete the road according to the terms and stipulations of his contract. The committee of directors of said company, after much negotiation with Mr. Chamberlain, induced him to take a note of the said company for the twenty thousand dollars found to be due to him, by pledging four hundred thousand dollars third mortgage bonds as collaterals, and also to agree to complete the road by the 15th day of October, so as to secure a portion of the fall business previous to the close of navigation on the Mississippi river and the lakes, although his contract did not require said Chamberlain to complete the road until the first day of January, 1859.

About the time of the completion of the road, a negotiation was entered into by the directors with Mr. Chamberlain, to apply a part of the earnings of the road to the payment of this note, secured by said bonds, and to the payment of the interest on the third mortgage bonds, as particularly specified in the resolution referred to in the affidavit of Hon. D. V. N. Radcliffe; but this agreement and arrangement with Mr. Chamberlain, after being agreed to at Milwaukee, as deponent understood in good faith, failed to be consummated by Mr. Chamberlain on his arrival at Albany, according to the previous arrangement, in consequence of advice given to said Chamberlain that he could not safely enter into such an agreement without danger and risk to his lease and judgment.

That deponent supposed in good faith that said agreement would be fulfilled and kept by said Chamberlain, and that said four hundred thousand dollars of third mortgage bonds would be re-
292 stored to the company, and the interest paid on the third mortgage to January 1st, 1861, and funded on the land grant bonds by the third mortgage bonds; that the failure of said arrangement to be carried out and perfected, under hand and seal, was not owing to the neglect or default of the said directors, or the said railroad company.

Deponent further saith, that after such failure on the part of said Chamberlain, he, this deponent, and the board of directors, made diligent and zealous efforts to raise the money and redeem the said bonds, or to get additional time from said Chamberlain, or from any other person or corporation, on a pledge of said bonds; but that deponent and said board were not able to raise the said money, and that said bonds were regarded by many persons as inadequate security for a loan or advance of $20,000, and that said bonds were therefore necessarily sold, but deponent understands that many of them have

been redeemed by various creditors of the road. Deponent further saith, that the said note was paid in full by the sale of said bonds.

Deponent further saith, that three hundred and eleven thousand dollars of said third mortgage bonds were pledged or hypothecated to Messrs. Gilbert, Gould, Watson and Foster, in pursuance of a resolution hereto annexed, marked A, and also for the purpose of raising funds to pay necessary expenses essential to the existence of the said company. Deponent further saith, that he hypothecated the said bonds on the best terms which he could obtain, and in good faith for the best interests of the company, and to protect the valuable property of the company from sacrifice and loss; that none of said bonds were hypothecated except as hereinafter mentioned.

Deponent further saith, that an ejectment suit had been commenced for the Round House property at Milwaukee, against the company, and deponent was informed and believed that the said company had no deed for said property, but a mere agreement for the same, and that there was imminent danger of the loss of said property to the company; that the said Round House property alone, with the buildings thereon, were worth, according to deponent's best information, knowledge and belief, the sum of about one hundred and fifty thousand dollars. Deponent further saith, that with the funds raised or borrowed by said hypothecated bonds, the said Round House property, and a part of the other property advertised to be sold, was preserved and retained by said company, and that such preservation of said property was for the best interests and benefit of said railroad company and its stockholders, and that in deponent's opinion there were no other available ways or means by which the said property could be protected and preserved from total loss and sacrifice. Deponent further saith, that no other of said third mortgage sinking fund bonds
293 were pledged or hypothecated by said company, to his best information, knowledge and belief, except such as were subsequently redeemed by said company, and that all the residue of said third mortgage bonds were disposed of at or near par in settlement or satisfaction of bona fide debts against the said company, with the exception of those used in funding land grant bond coupons, which were disposed of at seventy per cent., and those disposed of to the Fox Lake branch, and in re-purchasing the Madison branch, as hereinafter set forth. Deponent further saith, that the sum of thirty thousand dollars of said third mortgage bonds were disposed of by said La Crosse & Milwaukee Railroad Company to the Watertown & Baraboo Valley Railroad Company, in order to repurchase from the said company the land grant road from Madison to Portage City, which had been previously sold to the said Baraboo company, by the La Crosse company; thus enabling the La Crosse company to control the land grant road from Madison to Portage City.

Deponent further saith, that ten thousand dollars of said third mortgage bonds were disposed of by said La Crosse & Milwaukee Railroad Company, for the purpose of building or assisting in the building or construction of a branch road from Fox lake to the depot on the La Crosse road, by which deponent is informed, and believes,

a considerable and important accession would be made to the freight and passenger business of said road. Deponent further saith, that according to his best information, knowledge and belief, the balance of said third mortgage bonds were disposed of, as stated below, in satisfaction of bona fida and valid debts against the said La Crosse & Milwaukee Railroad Company:

William Watson, for unsecured bonds	$6,500
Rawdon, Wright, Hatch & Co., engraving	1,400
Alfred Noxon, coupons and unsecured bonds, the sum of about	18,506
H. G. Gilbert, unsecured bonds	20,000
Dr. W. H. Peckham, " "	10,000
E. P. Allis	10,000
Pierpont & Hanly, account	500
" " unsecured bonds	1,300
Eli Perry, " "	500
Divers persons, for land grant coupons	12,500
Isaac Hartshorn, unsecured bonds	5,000
W. A. Barstow, on account engineering and other expenses, St. Croix line	13,000
Wisconsin Home Office, used in paying in Wisconsin and settling claims therein, about	154,800
Assigned to R. Sage to settle various debts and judgments against the company	165,000
Russel Sage, judgment	80,000
294 S. R. Foster, unsecured bonds	3,000
A. C. Gunnison, " "	4,000
C. Schley, " "	7,700
McHoughton, acc't engineering	5,000
William Barnes, trustee services	10,000
M. H. Robertson, "	100
Wm. E. Cornwall, "	100
Wm. Platt, unsecured bonds	5,000
Amos Iron Co., account	600
A. Fleming, unsecured bonds	10,000
Rogers's locomotive works, bills payable	7,000
W. A. Guest, unsecured bonds	30,000
T. L. Everett, account	2,000
George Merrith, unsecured bonds	5,000
S. H. Alden, " "	23,000
Mr. Broadman, " "	5,000
Thomas, Dennis & Co., " "	5,000
G. W. Stanton, " "	1,000
Greene C. Bronson, account	5,000
E. G. Ryan, "	10,000
W. T. Boyd, unsecured bonds	14,000
Delia Lease, " "	1,000
Mr. Galpin, " "	10,000

E. A. Clark,	unsecured bonds	$1,000
Meigs & Greenleaf,	" "	10,000
R. S. Kneeland,	" "	1,000
		$1,000,000

Deponent further saith, that said third mortgage bonds have been disposed of not only by this deponent but by the committee for funding the floating debt of the company, and other committees, and by officers at the home office in Milwaukee, and in all cases in accordance with resolutions of the board of directors. Deponent further saith that, to the best of his information, knowledge, and belief, none of the bonds known as "corruption bonds" of said company have been taken in exchange for third mortgage bonds, except in one instance, that of R. S. Kneeland, of Hartford, Wis., $1,000, who received the said thousand dollar bond from the company, and paid therefor the sum of eight hundred dollars in cash, as deponent was informed by said Kneeland, and verily believed.

Deponent further saith, that it has been a source of constant annoyance to the board of directors that the plaintiff in this suit has, since October, 1857, constantly advertised the road for sale, and threatened at different times to sell out the road and its property under his judgment; that deponent has feared that said Cleveland would make the said sale, and deponent has labored and endeavored to prevent such sale; and that deponent believes that the said constant advertisement of said Cleveland has had a very injurious
295 effect on the credit of said company; added to which the said plaintiff has attacked the said road and the interests of the stockholders in the newspapers and in conversation, at the east and west, on almost every occasion when he could get the attention or notice of any individual. Deponent further saith that he has been zealous and unremitting in his efforts to have the said railroad completed to La Crosse, and has honestly endeavored to promote the best interests of the stockholders, and has also endeavored to the best of his ability to pay and cancel the debts due and owing by it to divers individuals and discharge the duties which the said company owed to its creditors; that the numerous and pressing liens of the said company have been a source of constant vexation, trouble, and embarrassment by numerous applications and other suits, also under mechanics' liens, sheriff's and marshal's sales, threatened sales for taxes on railroad property, injunctions for restraining the running of cars for default in payment of right of way, ejectment, writs of mandamus for conveyance, and various other ways too numerous to specify; and that this deponent and other members of the board have honestly and diligently endeavored to settle and cancel the floating debts of the company with the least loss the company could, after issuing said third mortgage bonds; and that it deponent supposed it to be fraudulent or improper for a railroad company to endeavor to pay and discharge its honest debts.

Deponent further saith, that annexed hereto, marked B, is a copy of said Cleveland's advertisement threatening to sell the said railroad; that the judgment on which said plaintiff threatens to sell said road has been, as deponent is informed and believes, carried by writ of error into the Supreme Court of the United States by E. G. Ryan, esq., the counsel of said railroad company; and that deponent is informed and believes that Mat. H. Carpenter and Wm. P. Lynde, the counsel of said plaintiff, are of opinion that said judgment will be reversed by the said Supreme Court, and so advise the said plaintiff; and deponent believes that in a new trial the said plaintiff will not be able to recover the sum of twenty thousand dollars against the said railroad company.

Deponent charges, on information and belief, that the said Cleveland obtained the contract on which his judgment was based by fraudulently paying the sum of five thousand dollars in money on a corrupt consideration for the awarding and giving of such contract to the said Cleveland.

Deponent further saith, that the said Cleveland is now trying to procure proxies in his own name to enable him to carry the next board of directors of said company; and deponent charges that it is the intention and plan of the said Cleveland to carry said election, and thus select a board of directors subservient to his will;
296 and that in such case the said plaintiff will have said board discontinue the writ of error in said plaintiff's case to the U. S. Supreme Court, and have the road sold on his or some other judgment in his control and interest, and thus cut off all the stock which said Cleveland pretends to be anxious to protect, and also cut off all the other creditors of said company who have taken third mortgage bonds, and others. Deponent charges, on information and belief, that said Cleveland has stated such plans to James Ludington, of Milwaukee, and declared that he intended to accomplish such fraudulent purpose and ends; and further saith not.

N. P. STANTON.

Taken, subscribed, and sworn to before me, at city of Albany, N. Y., on this 11th day of May, 1859.

Witness my hand and seal officially.

R. J. HILTON,
Commissioner for Wisconsin at City of Albany, N. Y.

Document A.

DECEMBER 13TH, 1858.

At a special meeting of the directors of the La Crosse & Milwaukee Railroad Company, held at the city of Albany on the 13th of December, 1858:

Present: N. P. Stanton, President; G. W. Luther, Alfred Noxon, Wm. Platt, D. V. N. Radcliffe, assistant secretary.

Whereas this board have received information from Milwaukee that a very large amount of its most valuable property in the city of

Milwaukee, including its machine shops, engine-houses, repair shops, the cost of which to this date, including the improvements thereon, is more than $150,000, are in imminent peril of being lost to this company in consequence of the non-payment of the sum of $10,000 and interest, being the balance due on contracts for the purchase money for said premises, and proceedings having already been commenced for the purpose of ejecting the company from the possession of said premises:

And whereas the company are totally destitute of means whereby to save from total loss said machine shops, round houses, and premises, if proceedings already commenced shall not be discontinued by the payment of said sum; and believing that any means within our power to protect and preserve the said property to the company is the duty of the board to resort to and adopt, inasmuch as the said premises are vital and indispensable to the working of said road:

And whereas there has already been sales during the present month of some of the real estate belonging to the company
297 in the city of Milwaukee, indispensable to the working of the road, which may yet be redeemed and saved by the company:

And whereas this board have not, until a recent date, been aware that the property of the company was in the peril we now find it in, having relied upon the statements and information obtained from the former officers of the company, and no record on the books of the company having exhibited the present condition of affairs:

And whereas the arrangements contemplated with Selah Chamberlain, by which he was to furnish such sums of money as may be necessary to protect the property of the company from sale or otherwise, for defraying the necessary expenses and salaries incident to our organization, &c., &c., has failed on account of Mr. Chamberlain declining to carry out such plan:

Therefore, *Resolved*, That the president of this company be, and he is hereby, directed to borrow or loan a sum not exceeding $15,000, to be used for the purposes above recited, and to sell, pledge, or hypothecate any bonds or securities belonging to the company, for the purpose of raising said amount, upon the best terms he may be able to obtain the same.

Resolved, That the president be requested, as soon as the funds above required are obtained, forthwith to proceed to Milwaukee, and to pay such claims and incumbrances against the said company as are indispensable to save the real estate and improvements thereon, and to prevent the sacrifice which will otherwise be made; and also that the said president be requested to ascertain and obtain reliable information as to any and all unpaid claims for right of way, or for any real estate which has been purchased by deed or appraisal for the use and benefit of the said company; also to ascertain the location and value of such real estate encumbered as above stated, and to report upon the above as fully as practicable at a meeting of the board of directors to be held in the city of Albany on the 5th day of January next. Adopted unanimously.

298 Circuit court, Columbia county, Wisconsin.

THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others,
against
NEWCOMB CLEVELAND.

STATE OF NEW YORK.
City and County of Albany, ss:

Russell Sage, being duly sworn, says that he is one of the defendants in this cause, that he is a resident of the State of New York; that he is not informed, save by the said complaint, and does not believe, that the mortgage or deed of trust to William Barnes, and commonly called the third mortgage upon the La Crosse & Milwaukee railroad, including the supplement thereto, was made or accepted without the design, intention or expectation of selling, using or disposing of the bonds thereunder issued for a reasonable price, or for less than the value thereof, or without the design or intention to pay the same, or the interest thereon. But this defendant is informed and believes that the said third mortgage was executed and accepted for the purpose and with the design of paying off, at the par value of the bonds to be issued thereunder, the bona fide floating debt honestly due by the said railroad company, and about to accrue; and that about one-half of the amount of the bonds issued under the said mortgage have been duly so used; that he is not informed, save by the said complaint, and does not believe, that the said mortgage was executed or accepted with the design or intention, or for the purpose of foreclosing the same as soon as the first interest coupons should become due; but is informed and believes that the same was executed and accepted with the bona fide intention and expectation that the said railroad company would be able to pay the interest to accrue thereon, and that the officers of the said railroad company did endeavor to make arrangements for the payment of such interest.

And this defendant is informed and believes that of the two millions of dollars of bonds issued under the said mortgage, five
299 hundred and fifty thousand dollars have been issued to Stoddard Judd, as a trustee, to indemnify or partially indemnify the stockholders of said railroad company, commonly called farm mortgage stockholders, for the breach by the said railroad company of its agreements with those stockholders; that about five hundred and twenty thousand dollars were sold to raise money for paying the indebtedness of the said company, and that the balance were paid to bona fide creditors of the said company in payment of their debts, some at rates above par, some at rates below par, and most at par, averaging at about par; and this defendant is informed and believes that the amount of floating debt paid and extinguished by the said two milllons of dollars of bonds is far greater than any value which the said two millions of dollars of bonds had ever had, or are likely to have, with the present previous debts of and liens on the property of the said railroadcompany.

And this defendant is not informed, save by the said complaint, and does not believe, that five hundred thousand dollars of said bonds, or any such amount, are held by the present directors of the said railroad company, or by others for them, or that the said directors parcelled or dealt out the said bonds, in large or any amounts, to their friends or favorites at nominal considerations, or otherwise than is hereinbefore stated. And this defendant says that he received eighty thousand dollars of said bonds in payment of a judgment received by him in the circuit court of Milwaukee county, Wisconsin, upon a bona fide indebtedness of the said company, held and owned by him, and on which that amount was then due.

And this defendant says that he has never been an officer of said railroad company, nor ever interested therein, save as a creditor; that he never countenanced or advised any sacrifice of said bonds, or any of them, for any other use than the payment of the floating debts at or near par.

RUSSELL SAGE.

Subscribed and sworn to before me this 10th day of May, 1859. Witness my hand and seal officially, at city of Albany.

[SEAL.] R. J. HILTON,
Commissioner for Wisconsin at City of Albany, N. Y.

300 Circuit court, Columbia county, Wisconsin.

NEWCOMB CLEVELAND
against
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, WILLIAM BARNES and others.

STATE OF NEW YORK,
City and County of New York, ss:

Stephen H. Alden, being duly sworn, doth depose and say that he resides in the city of Albany; that in the year 1857 he purchased in the city of New York twenty-three thousand dollars in amount of seven per cent. convertible bonds of the La Crosse & Milwaukee Railroad Company, for which this deponent paid seventy per cent., and has since held the same; that this deponent knows said bonds were sold by said company at the rate of from seventy to seventy-five per cent., which bonds were part of an issue of bonds for $300,000, seven per cent. convertible bonds sold by said company for cash and iron, and the proceeds applied to the construction of the said road from Beaver Dam to Portage City. That upon receiving notice from the directors of said company that they were desirous of funding their floating debt and unsecured bonds by exchanging their third mortgage bonds for such unsecured bonds, this deponent did deliver and exchange his said bonds above described for the said third mortgage bonds, and which said third mortgage bonds this deponent now holds.

Deponent further saith, that he is not and never has been in any

way or manner interested, directly or indirectly, in any of said third mortgage bonds hypothecated by said railroad company. Deponent further saith that, to his personal knowledge, the $14,000 of third mortgage bonds held by D. J. Boyd were exchanged for the same kind of said bonds above mentioned, which deponent exchanged, and that the said Boyd paid at the rate of seventy per cent. for said bonds, commonly called "red bonds," to the said railroad com-
301 pany; and that Meigs & Greenleaf made their exchange for the same kind of bonds, and also others, and further deponent saith not.

S. H. ALDEN.

In the city of Albany and State of New York, on the 11th day of May, 1859, by the said Stephen H Alden sworn to before me, Edward Wade, a commissioner in and for said State of New York, appointed a commissioner by the governor of the State of Wisconsin to take and certify affidavits, depositions, acknowledgments, &c., to be used in said State of Wisconsin.

In witness whereof, I have hereunto set my hand and affixed my seal of office this 11th day of May, 1859.

[SEAL.] EDWARD WADE.
Commissioner of the State of Wisconsin, in and for the State of New York.

302 *Exhibit No. 2.*

In circuit court of the United States for the ninth circuit and district of Wisconsin. In equity.

HENRY J. NAZRO
vs.
THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY and others.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Nehemiah P. Stanton, of the city and State of New York, being duly sworn, on oath says that he has read the bill of complaint sworn to by John Nazro in the above-entitled cause, and that this deponent was president of the La Crosse and Milwaukee Railroad Company from the month of April, A. D. 1858, and remained president until the sale of said road in May, 1859, and is conversant with the circumstances forming the subject-matter of the bill of complaint aforementioned, so far as the same relates to the disposition of the third mortgage bonds of the La Crosse and Milwaukee Railroad Company.

And this deponent further saith, that the charges contained in said bill of complaint that a committee of three of the directors of said La Crosse and Milwaukee Railroad Company, consisting of Alfred Noxon, William A. Guest, and Albert C. Gunnison, made a pretended settlement with Selah Chamberlain, in which said committee gave

said Chamberlain the note of the said railroad company for twenty thousand dollars, well knowing there was at that time no money
303 due to the said Chamberlain, is utterly and entirely false, so far as this deponent has any knowledge; but this deponent avers the truth to be, according to his best information, knowledge, and belief, the said note of twenty thousand dollars was given to said Chamberlain, and four hundred thousand dollars of the third mortgage bonds aforesaid deposited as collateral security to said note, in consequence of a balance of twenty thousand dollars being found to be due to said Chamberlain on his contract for building the western division of said road; that said note was given in good faith; that said bonds were deposited as collateral security to said note in good faith; that said bonds were sold only after much diligent effort on the part of this deponent, and the other directors had been made to raise the money and redeem said bonds, and that the whole transaction was made and carried out in good faith, and for the best interests of the company, and that it is entirely false that said note was given, and said bonds pledged, for the purpose of throwing a majority of the third mortgage bonds into the hands of any person or persons for the purpose of controlling the company about to be formed from the foreclosure of said third mortgage bonds. And this deponent further saith, that it is entirely false that any of said third mortgage bonds were pledged with William Gould, William Watson, H. G. Gilbert, or Seth R. Foster, or any other person, with the understanding that said bonds should be forfeited by the non-payment of the loans made on said bonds; on the contrary, this deponent avers the truth to be, that said bonds were only sold after due notice had been given to the company by the said Gould, Watson, Gilbert, and Foster, and after it had been found impossible to pay said loans, that the
304 money raised from said Gould, Watson, Gilbert, and Foster was used in paying off incumbrances on the property of the company in the city of Milwaukee, whereby the same was saved from sacrifice. And this deponent further saith, that it is utterly false that any part of the money raised by the loans aforesaid was appropriated to the use of this deponent fraudulently; on the contrary, this deponent is ready now, and at all times, to show the manner in which all of said money so raised was disposed of, and to show that such disposition was made of it as was most for the interests of said company, unless that portion of it which John P. McGregor and William E. Smith insisted upon taking for their services may be considered more than an equivalent for any services rendered by the said McGregor and the said Smith.

And this deponent denies that he has any knowledge as to who may have purchased the four hundred thousand dollars of bonds sold to pay the note given to said Chamberlain as aforementioned; but this deponent avers that no part of said bonds were bought by this deponent, or by any other person for this deponent; and this deponent denies that he has never rendered any account of the disbursement of the money raised by the loans on said bonds as aforementioned; but, on the contrary, avers the fact to be, that such account was

rendered, and all of said money so raised was fully accounted for, as the books of said company will show.

And this deponent further saith, that the averment in said bill contained, that John P. McGregor and William E. Smith, directors of the La Crosse and Milwaukee Railroad Company, had made certain arrangements whereby the valuable Round House property of the
305 company, and other property in the city of Milwaukee, had been, by the efforts of the said McGregor and the said Smith, saved from the danger of being sacrificed, as fully set forth in said bill of complaint, sworn to by John Nazro, is utterly untrue and false in every particular, so far as any action of this deponent therein is concerned; and this deponent avers the truth to be, that the said McGregor and the said Smith, (from whom the complainant Nazro receives the statements in relation to the transaction of the payment of the incumbrances on the Round House and other property aforementioned, as said bill of complaint shows,) on another occasion, when the same charge was made against this deponent in the year 1859, met the same charge and denied it under oath in an affidavit, sworn to on the 12th day of May, 1859, in the following words, to wit: "And these deponents further severally say that they have no personal knowledge of any transactions of the president of said company in borrowing money upon pledges of the said bonds, but they are informed and believe that N. P. Stanton, president of the said company, has borrowed money on pledges of the said bonds, at the rate of five cents on the dollar, to meet the pressing exigencies of the said company, and that with the money thereby raised he saved property of and used by the company, from sale upon foreclosure and forfeiture by breach of contract, to the amount of fully or near one hundred and fifty thousand dollars, including a part of the depot property of the said company in the city of Milwaukee, and eighteen acres of land in said city, whereon are the large and valuable Round House, machine shops, and other buildings of the said company.
These deponents are informed and believe that the value of the
306 property so saved was greater than the nominal amount of the bonds so hypothecated, and far greater than any real value of the bonds at said time, but these deponents were not personally parties to or responsible for such hypothecation. And these deponents further say, that it is not true that the officers or agents of said company have in no instance sold any of said third mortgage bonds at rates above five cents on the dollar; that these deponents severally know of the disposal of large amounts of said bonds at par, and are informed and believe that about or nearly one-half of the said third mortgage bonds were paid to *bona fide* creditors of the said company in payment of their debts, at rates nearly averaging par, and by far the greater part thereof at par. And these deponents severally say, and each for himself says, that they believe that in the circumstances hereinbefore stated, the said third mortgage bonds never have been and are not a good security, nor have they, to the information and belief of these defendants, ever had a fixed market value; that in the neighborhood of one million of dollars of *bona fide* indebtedness of

the said company, besides the then liabilities to the farm mortgage stockholders, have been paid and satisfied by the said third mortgage bonds, which is a much greater amount than the whole issue thereof ever has been or is worth, or is ever likely to be worth, if held valid, in the belief of these deponents; and that the said farm mortgage stock amounts to about one million and eighty-seven thousand dollars." And this deponent further saith, that the extract above given from the affidavits of the said McGregor and the said Smith, is a true statement, so far as this deponent has any knowledge of the facts with regard to the transaction in relation to the payment of
307 the incumbrances on the property of the company, and that the whole of the said extracts from the affidavits of the said Smith and the said McGregor with regard to the value of and disposal of the said third mortgage bonds *is true*, according to the best information, knowledge, and belief of this deponent.

And this deponent further saith, that after a close and careful reading of the bill of complaint sworn to by the said John Nazro, he finds the allegations therein contained, so far as the same charge gross frauds on this deponent in the disposal of the securities of the said La Crosse & Milwaukee Railroad Company, and the disbursement of the funds thereof, utterly and entirely untrue in their general scope and bearing, and that the whole spirit of the said bill of complaint is false and malicious, so far as this deponent is concerned; and so far as the same refers to the other directors and agents of the company at that time, this deponent, who had every opportunity of knowing, believes the averments in said bill of complaint to be untrue.

And further this deponent saith not.

NEHEMIAH P. STANTON.

Sworn to before me the fourteenth day of February, 1863.

J. BUCHANAN HENRY,
United States Commissioner, Southern District of New York.

308 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of J. Buchanan Henry, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting. I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this second day
[SEAL.] of March, in the year of our Lord, one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-seventh.

KENNETH G. WHITE.

309 *Exhibit No. 3.*

In circuit court of the United States for the ninth circuit and district of Wisconsin.

HENRY J. NAZRO
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and others. } In equity.

NORTHERN DISTRICT OF NEW YORK, *ss:*

George W. Luther, of the city of Albany and State of New York, being first duly sworn on oath, says, that he has heard read the bill of complaint in the above-entitled cause, and that the allegation therein contained that this affiant fraudulently confederated with Stephen H. Alden for the purpose of throwing a majority of the third mortgage bonds of the La Crosse and Milwaukee Railroad Company into the hands of the friends of said Alden, or of the friends of this affiant, for the purpose of controlling the organization of the new company to be formed from the foreclosure of the said third mortgage, is utterly false and untrue.

And this affiant also further saith, that the allegation contained in said bill of complaint, that a committee of three directors of said railroad company, consisting of Alfred Noxon, A. C. Gunnison, and William A. Guest, made a pretended settlement with Selah Chamberlain, in which they gave said Chamberlain the note of said company for twenty thousand dollars, and deposited with said Chamberlain, to secure the payment of said note, four hundred
310 thousand dollars of the third mortgage bonds of said railroad company, well knowing that there was not at that time any money due to the said Chamberlain, is, so far as this affiant has any knowledge, utterly untrue.

And this affiant further saith, that when the note so given as aforesaid to the said Chamberlain became due, this affiant, with the president and other directors of the said railroad company, finding it impossible to pay said note, and thereby save from sacrifice the bonds pledged with said note as aforesaid, did urge upon the said Chamberlain to give further time to the said company, in which to pay said note, and in consequence, as this affiant believes, of these representations so made to the said Chamberlain, further time was twice given by the said Chamberlain.

And this affiant believes said bonds were only sold after it had been found impossible to pay said note, and for no other reason so far as this affiant has any knowledge. And this affiant denies that he purchased fifty thousand dollars of said bonds sold to pay said note. And this affiant also saith that he never received any of said bonds, third mortgage bonds so called, from the president of said company, or from any director of said company, directly or indirectly; and as far as this affiant has any knowledge, he believes said bonds were disposed of in good faith, and on the best terms that could be obtained

for the same, and that the hypothecation of said bonds to William Watson, William Gould, H. G. Gilbert, or Seth R. Foster,
311 was made in good faith, and without any design to sacrifice the same; but was only made to raise funds to save the lands and buildings of said company from sacrifice, and from indispensable expenses.

And this affiant further saith, that any and all allegations contained in said bill of complaint, charging this affiant with any fradulent design, or intention, or act, during the time this affiant was a director in said company, or at any other time, in relation to the affairs of said company, is unequalifiedly false. And further this affiant saith not.

GEORGE W. LUTHER.

Taken, subscribed, and sworn to before me this 27th day of February, A. D. 1863, at city of Albany, N. Y.

R. J. HILTON,
United States Court Commissioner for Northern District of New York, in 2d Circuit.

312 *Exhibit No. 4.*

In circuit court of the United States for the ninth circuit and district of Wisconsin.

HENRY J. NAZRO
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and others. } In equity.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Albert C. Gunnison, of the city and State of New York, being first duly sworn, on oath says, that he has read the bill of complaint sworn to by John Nazro in the above-entitled cause, and that the allegation therein contained that this affiant, as one of a committee of three of the directors of the La Crosse and Milwaukee Railroad Company, made a "pretended" settlement with Selah Chamberlain, in which they gave the said Chamberlain the note of the said company for twenty thousand dollars, and deposited with said Chamberlain, to secure the payment of the said note, four hundred thousand dollars of the third mortgage bonds of the said company, well knowing there was not at that time any money due to the said Chamberlain, is, so far as this affiant is concerned, utterly untrue. And this affiant denies that he had at that time any knowledge of any fraud in settlement, nor has he now any knowledge of any fraud in said settlement. And this affiant denies that he had any fraudulent design or knowledge or intention in the said transaction, or that in the hypo-
313 thecation of said third mortgage bonds to said Chamberlain, or to any other person or persons, he intended or designed, or had made any arrangement to control the company to be formed from the foreclosure of the said third mortgage. And this defiant

denies that any of the said third mortgage bonds were hypothecated to William Gould, William Watson, H. G. Gilbert, or S. R. Foster, with the understanding or agreement that said bonds should be forfeited by the non-payment of the loans to the said Gould, Watson, Gilbert, or Foster, so far as this affiant has any knowledge of the same.

And this affiant denies that, at any time while he was a director in the said La Crosse & Milwaukee Railroad Company, or at any other time, he was guilty of any fraudulent act with regard to the affairs of said company, or, so far as he had any voice or part in the administration of the affairs of said company, that he ever intended or designed to aid or abet any fraudulent design on the part of any other person or persons in any matter relating to said company; nor has this affiant any knowledge of any fraudulent act or design on the part of any other director in said company.

And this affiant further says, that the whole scope and spirit of the bill of complaint sworn to by John Nazro and signed by John P. McGregor, as attorney and counsel of said Nazro, is slanderous and malicious, so far as this affiant is concerned, and more particularly
314 on the part of the said John P. McGregor, as this affiant has reason to believe.

And this affiant further says, that some time in the month of May last, the said John P. McGregor endeavored to prevent this affiant and his friends from voting on certain stock of the Milwaukee & Minnesota Railroad Company at the annual election of directors of said company, then about being held, by threatening this affiant that unless he divided the said stock with the said McGregor and his friends at the price at which this affiant and his friends had bought it, and would also vote for the said John P. McGregor and one William E. Smith, and three other persons to be named by the said McGregor and the said Smith for directors of the said Milwaukee & Minnesota Railroad Company, that he, the said McGregor, would cause proceedings to be instituted to show the said stock so demanded to be divided with the said McGregor to be fraudulent. And this affiant further saith, that on his refusing to accede to these impudent assumptions of the said McGregor and the said Smith, an injunction was applied for by the said McGregor in the circuit court of Milwaukee county, before the honorable Arthur McArthur, presiding judge thereof; that the said McGregor, in the said proceedings, appeared as the attorney of one Russell Sage, and asked for the said injunction to prevent this affiant from voting on his said stock, on the ground, as alleged by the said McGregor, that the said stock was fraudulent, *the said stock being the same that this affiant had refused to divide with the said McGregor, as already recited;* and this affiant filed an
315 answer to the charges then *made by the said McGregor*, as attorney for the said Sage, *the affidavit of the said McGregor and the said Sage, made in the year* 1859, *denying the same charges the said McGregor was then seeking to substantiate*, and on the allegation of which he was then asking the said circuit court for an injunction. And this affiant further saith, that the court refused the said McGregor the

injunction so asked for, and gave as the reason for its refusal, that that the affidavits of the said McGregor and said Sage, filed in answer by this affiant as aforementioned, were diametrically opposite to the statements made by the said McGregor and the said Sage in the bill in which they were then asking for an injunction against this affiant.

And this affiant further saith, that the allegations contained in the bill of complaint sworn to by John Nazro and signed by said McGregor, as his attorney and counsel with regard to this affiant, and the stock owned by this affiant and his friends, are almost the same, and in several of them precisely the same, as the allegations in the bill filed by the said McGregor, as attorney for Russell Sage, in which the injunction asked for was refused by the court as above recited.

And this affiant further saith, that he has many reasons for believing that the suit instituted in the name of Henry J. Nazro is based on nothing but the disappointment felt by the said McGregor at the refusal of this affiant to divide with the said McGregor the stock which he is now endeavoring to prove fraudulent, and also the refusal of this affiant to make the said McGregor and his friends direc-
316 tors of, and thus enable them to control, the said Milwaukee & Minnesota Railroad Company.

And this affiant believes that if he had submitted to the demands of the said McGregor, no allegation of fraud would have been made on the validity of the stock owned by this affiant and his friends.

A. C. GUNNISON.

Sworn to before me this 2d day of March, 1863.

CHA'S W. NEWTON, [SEAL.]
United States Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Charles W. Newton, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do hereby certify that he was, at the time of signing the same, United States commissioner duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of March, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of these United States the eighty-seventh.

[SEAL.]

[STAMP.]

KENNETH G. WHITE, *Clerk.*

317 *Exhibit No. 5.*

In circuit court of the United States for the ninth circuit and district of Wisconsin.

HENRY J. NAZRO
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and others.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William A. Guest, of the city and State of New York, being first duly sworn, on oath says that he has read the bill of complaint sworn to by John Nazro in the above-entitled cause, and that the charges therein made that this affiant, as one of a committee of three directors of the La Crosse & Milwaukee Railroad Company, of which the other two were Alfred Noxon and Albert C. Gunnison, made a pretended settlement with Selah Chamberlain, in which they gave to him, the said Chamberlain, the note of the La Crosse and Milwaukee Railroad Company for twenty thousand dollars, together with four hundred thousand dollars of the third mortgage bonds of the said La Crosse & Milwaukee Railroad Company, as security for the payment of said note, well knowing that there was not at the time any money due to the said Chamberlain; and further charging this affiant, as one of said committee, with having given said note and said bonds to said Chamberlain with the fraudulent intention of throwing a majority
318 of said third mortgage bonds into the hands of his confederates and friends, and thus controlling the new company about to be formed from the foreclosure of said third mortgage, *is, so far as this affiant is concerned, utterly untrue;* but that so far as this affiant had or has any knowledge of the transaction to which said gross charge refers, he, at the time, did, and still does believe that said sum of twenty thousand dollars for which said note was given to said Chamberlain, and to secure the payment of which the four hundred thousand dollars of third mortgage bonds aforesaid were deposited with said Chamberlain, was fairly and honorably due to the said Chamberlain; and this affiant denies that at any time while he was a director in the said La Crosse & Milwaukee Railroad Company, or member of any committee of the directors of said company, that he gave to Alexander Fleming, or to any other person, any of said third mortgage bonds without consideration, or for a merely nominal consideration; and this affiant also denies that at any time, to his knowledge, while he was a director in the said La Crosse & Milwaukee Railroad Company, any of the said third mortgage bonds were hypothecated for five cents on the dollar to William Gould, William Watson, H. G. Gilbert, or Seth R. Foster, or any other person or persons, with the understanding that said bonds so hypothecated should be forfeited to the said Gould, Watson, Gilbert, and Foster, or any other per-
319 son, by the non-payment of the money so borrowed on said bonds; but, on the contrary, this affiant affirms the truth to be

that all said loans were made in good faith so far as this affiant has any knowledge of the same. And this affiant also further denies that he at any time appropriated to himself, while a director in said company, any money in any way belonging to said company, or at any time, or in any way appropriated any funds belonging to said company to or for any purpose other than the lawful use and benefit of said La Crosse & Milwaukee Railroad Company.

WM. A. GUEST.

Sworn to before me this 17th day of February, 1863.

KENNETH G. WHITE, [SEAL.]
U. S. Commissioner duly appointed by the Circuit Court of the U. S. for the Southern Dist. of New York, and clerk of said court.

320 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Kenneth G. White, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of [SEAL.] March, in the year of our Lord one thousand eight hundred and sixty-three, and the independence of these United States the eighty-seventh.

[STAMP.] KENNETH G. WHITE, *Clerk.*

321 *Exhibit No. 6.*

In the circuit court of the United States for the ninth circuit and district of Wisconsin.

HENRY J. NAZRO
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and others. } In equity.

DISTRICT OF WISCONSIN, *ss:*

Horatio G. Gilbert, being first duly sworn, on oath says, that about the month of December, A. D. 1858, he loaned to the La Crosse & Milwaukee Railroad Company the sum of seven thousand five hundred dollars, and took the promissory note of said company for that sum, and received as collateral security to said note the third mortgage bonds of said company, so called, at the rate of five cents on the dollar.

317 *Exhibit No. 5.*

In circuit court of the United States for the ninth circuit and district of Wisconsin.

HENRY J. NAZRO
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and others.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William A. Guest, of the city and State of New York, being first duly sworn, on oath says that he has read the bill of complaint sworn to by John Nazro in the above-entitled cause, and that the charges therein made that this affiant, as one of a committee of three directors of the La Crosse & Milwaukee Railroad Company, of which the other two were Alfred Noxon and Albert C. Gunnison, made a pretended settlement with Selah Chamberlain, in which they gave to him, the said Chamberlain, the note of the La Crosse and Milwaukee Railroad Company for twenty thousand dollars, together with four hundred thousand dollars of the third mortgage bonds of the said La Crosse & Milwaukee Railroad Company, as security for the payment of said note, well knowing that there was not at the time any money due to the said Chamberlain; and further charging this affiant, as one of said committee, with having given said note and said bonds to said Chamberlain with the fraudulent intention of throwing a majority
318 of said third mortgage bonds into the hands of his confederates and friends, and thus controlling the new company about to be formed from the foreclosure of said third mortgage, *is, so far as this affiant is concerned, utterly untrue;* but that so far as this affiant had or has any knowledge of the transaction to which said gross charge refers, he, at the time, did, and still does believe that said sum of twenty thousand dollars for which said note was given to said Chamberlain, and to secure the payment of which the four hundred thousand dollars of third mortgage bonds aforesaid were deposited with said Chamberlain, was fairly and honorably due to the said Chamberlain; and this affiant denies that at any time while he was a director in the said La Crosse & Milwaukee Railroad Company, or member of any committee of the directors of said company, that he gave to Alexander Fleming, or to any other person, any of said third mortgage bonds without consideration, or for a merely nominal consideration; and this affiant also denies that at any time, to his knowledge, while he was a director in the said La Crosse & Milwaukee Railroad Company, any of the said third mortgage bonds were hypothecated for five cents on the dollar to William Gould, William Watson, H. G. Gilbert, or Seth R. Foster, or any other person or persons, with the understanding that said bonds so hypothecated should be forfeited to the said Gould, Watson, Gilbert, and Foster, or any other per-
319 son, by the non-payment of the money so borrowed on said bonds; but, on the contrary, this affiant affirms the truth to be

that all said loans were made in good faith so far as this affiant has any knowledge of the same. And this affiant also further denies that he at any time appropriated to himself, while a director in said company, any money in any way belonging to said company, or at any time, or in any way appropriated any funds belonging to said company to or for any purpose other than the lawful use and benefit of said La Crosse & Milwaukee Railroad Company.

WM. A. GUEST.

Sworn to before me this 17th day of February, 1863.

KENNETH G. WHITE, [SEAL.]

U. S. Commissioner duly appointed by the Circuit Court of the U. S. for the Southern Dist. of New York, and clerk of said court.

320 UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Kenneth G. White, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this second day of March, in the year of our Lord one thousand eight hundred and sixty-three, and the independence of these United States the eighty-seventh.

[SEAL.]

[STAMP.] KENNETH G. WHITE, *Clerk.*

321 *Exhibit No. 6.*

In the circuit court of the United States for the ninth circuit and district of Wisconsin.

HENRY J. NAZRO
vs.
THE MILWAUKEE & MINNESOTA RAILROAD COMPANY and others.
} In equity.

DISTRICT OF WISCONSIN, *ss:*

Horatio G. Gilbert, being first duly sworn, on oath says, that about the month of December, A. D. 1858, he loaned to the La Crosse & Milwaukee Railroad Company the sum of seven thousand five hundred dollars, and took the promissory note of said company for that sum, and received as collateral security to said note the third mortgage bonds of said company, so called, at the rate of five cents on the dollar.

This affiant further says that said money was loaned in good faith, and said note and said collateral security were taken and received by him in good faith and in due course of business, and that there was not at the time this affiant loaned said money, or took said note and bonds, nor at any other time, any understanding or agreement whatever between this affiant and any officer or agent of said company or any other person or persons that said note should not be paid, or that said bonds should be sacrificed ; that the money was loaned to said company as a demand loan, and because the president
322 of said company represented that the company must immediately raise money to prevent a sacrifice of its property. That after the return of the president to the State of New York from Milwaukee, this affiant notified said company that said note must be paid by a certain time, or that this affiant would dispose of said bonds, so held by him as collateral security; and that the company did not pay the same within the time, and that this affiant in due course of business disposed of said bonds at the rate of five per cent., that being the highest price he could obtain for said bonds.

This affiant further states that said sale was not made in pursuance of any pre-arranged plan or scheme to become or have the purchasers become owners of stock in any corporation to be formed on the foreclosure of said third mortgage. That the whole transaction, from the loan to the disposition of said bonds inclusive, was done in good faith and in the ordinary course of business, and not in pursuance of any scheme or design to injure or defraud said La Crosse & Milwaukee Railroad Company or any other person or persons; and that all the allegations and charges in the bill of complaint in this cause charging fraudulent conduct or designs upon this affiant, by the name of Henry G. Gilbert or otherwise, are totally untrue.

H. G. GILBERT.

Subscribed and sworn to before me this 2d day of February, A. D. 1863.

EDWARD KURTZ, *U. S. Comm'r.*

323 *Petition overruled.*

July 21, 1863.—This day came the parties by their counsel, and the motion and petition of the Milwaukee & Minnesota Railroad Company for an order that said company be put into possession of the eastern division of the La Crosse & Milwaukee railroad, and the motion of said Milwaukee & Minnesota Railroad Company on file for an order vacating the order of the twelfth day of June, 1863, having been argued by counsel, it is ordered by this court that the said several motions and petition of the said Milwaukee & Minnesota Railroad Company be, and the same hereby are, overruled and denied.

July 25, 1863.—Receiver's report for month of June, 1863, filed.

Petition of complainants for money.

August 3, 1863.—This day came the complainants by their solicitor and filed their petition, as follows:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON AND JAMES T. SOUTTER
v.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY, THE MILWAUKEE & MINNESOTA RAILROAD COMPANY, and others.

The petition of the complainants by Thomas L. Ogden, their solicitor, shows to the court that there is due to the complainants, by the terms of their mortgage, for interest, the sum of $270,580 10, and, by the terms of the decree, an appeal from which is now
324 pending in the Supreme Court of the United States, the sum of $135,290 05, all of which duly appears from the record of this case. Your petitioners further state on information and belief that there now remains in the hands of the receiver a large sum of money properly applicable to the payment of the said interest or a portion thereof. Your petitioners therefore pray that an order may be made directing the receiver to pay over to the complainants, on account of such interest, such sum of money as the court may deem proper, the same to be applied as payment of so much interest due on said mortage in ascertaining the amount for which any final decree hereafter is to be rendered, or, if the present decree shall be affirmed, as so much paid on that decree.

THOMAS L. OGDEN,
Sol. for Compt's.

August 21, 1863.—Receiver's report for month of July, 1863, filed.

Suggestion of death of Greene C. Bronson.

September 10, 1863.—This day came the Milwaukee & Minnesota Railroad Company by Mat. H. Carpenter, its solicitor, and made suggestion of the death of Greene C. Bronson, one of these complainants, as follows:

District court of the United States for the district of Wisconsin.

GREENE C. BRONSON
and JAMES T. SOUTTER, trustees, complainants,
v.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others, defendants.
In equity.

325 Here in court comes the Milwaukee & Minnesota Railroad Company by Mat. H. Carpenter, its solicitor, and suggests the

death of Greene C. Bronson, one of the complainants in this cause, who departed this life at Saratoga, in the State of New York, on the third day of September, A. D. 1863.

Dated September 10, 1863.

THE MILWAUKEE & MINNESOTA RAILROAD COMPANY,
By MAT. H. CARPENTER, *its Solicitor.*

Appeal of the Milwaukee & Minnesota Railroad Company.

September 14, 1863.—This day came the defendant, Milwaukee & Minnesota Railroad Company, and prayed an appeal to the Supreme Court of the United States from the decree rendered in this cause on the 13th day of January, 1862, and from all orders made herein subsequent to said decree. And came Austin Gunnison, Moses Kneeland, and J. A. Noonan, and filed their bond in the penalty of $500, for the payment of the costs of said appeal, which bond is approved by the judge.

And said bond is in the words and figures following, to wit:

Bond for appeal.

Know all men by these presents that we, A. C. Gunnison, Moses Kneeland, and Josiah A. Noonan, of the city and county of Milwaukee, State of Wisconsin, are held and firmly bound unto James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees,
complainants in a cause in equity hereinafter mentioned, in the
326 full and just sum of five hundred dollars lawful money of the United States, to be paid to the said Soutter, survivor of the said Greene C. Bronson and James T. Soutter, or his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and ad-administrators jointly and severally, by these presents.

Sealed with our seals, and dated this 10th day of September A. D. 1863.

Whereas, lately, at a term of the district court of the United States for the district of Wisconsin in equity, in a suit in equity depending in said court between the said Greene C. Bronson and James T. Soutter, complainants, and the La Crosse & Milwaukee Railroad Company, the Milwaukee & Minnesota Railroad Company, Selah Chamberlain, Sebre Howard, Conrad Wellauer, Edward H. Brodhead, Newcomb Cleveland, William Gemmell, Joshua Hathaway, James Wolstenholme, Edwin C. Litchfield, Ebenezer Higgins, George R. Mowry, Henry K. Eastman, Henry L. Simonds, Dewitt C. Freeman, E. Bradford Greenleaf, Frederick Lind, Sebastian Knetzger, Lawrence G. Graham, Donald D. Scott, Thomas Turton, John Sercomb, Ephraim Mariner, Avery Hill, A. V. Rudd, Franklin
J. Blair, Edward R. Persons, Philip S. Justice, Elkanah Cobb,
327 John V. Bean, Philip Wilson, J. Howard Mitchell, Edwin Townsend, the Mercantile Bank of Hartford, Ct., August Lauthof, Charles Quentin, John H. Tesch, Byron Kilbourn, Nathaniel S.

Bouton, the Juneau Bank, the Milwaukee, Watertown & Baraboo Valley Railroad Company, Cicero Comstock, George W. Chapman, Moses M. Davis, Charles Howard, and Henry Vallette, defendants, a decree was rendered against the said defendants and particularly against the Milwaukee & Minnesota Railroad Company; and the said Milwaukee & Minnesota Railroad Company having obtained an appeal from said decree to the Supreme Court of the United States, and filed a copy of the record of said suit in the clerk's office of the said Supreme Court, to reverse the said decree and orders in the aforesaid suit, and a citation directed to said James T. Soutter, survivor, &c., citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such that if the said Milwaukee & Minnesota Railroad Company shall prosecute its appeal to effect and answer all damages and costs if said company fail to make its appeal good, then the above obligation to be void; else, to remain in full force and virtue.

AUSTIN GUNNISON. [SEAL.]
MOSES KNEELAND. [SEAL.]
J. A. NOONAN. [SEAL.]

328 Sealed and delivered in presence of—
WILLIAM J. C. FORSTER.

Endorsed as follows: September 14, 1863. Approved.
A. G. MILLER, *Dis. Judge.*

Whereupon it is ordered by the court that said appeal be and hereby is allowed, and that the clerk certify to said Supreme Court all proceedings in this cause subsequent to the record already certified upon the appeal of the complainants; and citation issued as follows:

329 *Citation.*

The United States of America to James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to an appeal filed in the clerk's office of the district court of the United States for the district of Wisconsin, wherein the Milwaukee & Minnesota Railroad Company is appellant and you are appellees, to show cause, if any there be, why the said decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this fourteenth day of September, in the year of our Lord one thousand eight hundred and sixty three, and of our independence the eighty-eighth.

A. G. MILLER, *District Judge.*

Served on the within-named James T. Soutter, survivor of Greene C. Bronson and James T. Soutter, trustees, by delivering personally to Thomas L. Ogden, his attorney, a copy of this citation, this 18th day of September, 1863.

D. C. JACKSON, *Marshal,*
By W. S. JACKSON, *Deputy.*

Service	$2 00
Travel	06
Copy	20
Total,	2 26

330 September 26, 1863.—Receiver's report of the earnings of the eastern division of the La C. and Mil. R. R. Co., from June 15th to Aug. 31st, 1863, filed.

September 29, 1863.—Receiver's report for month of August, 1863, filed.

October 5, 1863.—The petition on behalf of the complainants, for an order to pay to them revenues of the road, having been presented for the consideration of the court, it is ordered by the court that after the disbursement of moneys arising from the revenues of the eastern division of the railroad from Milwaukee to Portage City, to previous incumbrances and necessary expenses, the receiver pay to the holders of the bonds secured by this mortgage, respectively, their proportional share of such surplus, if any, as may be in his hands, taking the receipts therefor of said bondholders, by themselves or their agents. And all such payments to be credited on account of the present decree of this court, or such decree as may be eventually made in this cause if the present decree be reversed or modified. And when coupons are presented separate from bonds, the payment is to be endorsed on the coupons, taking the receipt of their holders for the same. The payments of the receiver, in all cases, to be applicable to the coupons first payable. On objection to the payment of coupons detached from bonds, the receiver will not pay the same without a special order of court.

331 October 26, 1863.—The receiver will make report to the court, on the first Monday of January next, of the amount of money then in his hands, after paying previous incumbrances, according to the order of the 5th October instant. And he will give notice by publication in one newspaper published in the city of New York, and in one newspaper published in the city of Milwaukee, for thirty days, that on the said first Monday of January next, the court will hear and determine all applications for money under said order.

A. G. MILLER, *Judge.*

332 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, John M. Miller, clerk of the district court of the United States of America, for the district of Wisconsin do hereby certify that I

have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of Greene C. Bronson and James T. Soutter against the La Crosse and Mil. Railroad Co. and others, subsequent to the record certified on the 10th April, 1862.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said [L. S.] district of Wisconsin, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the said United States the eighty-eighth.

[STAMP.] J. M. MILLER, *Clerk.*

Filed 12th November, 1863.

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